



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On February 2, 2004_____

Date of Meeting: March 17, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson, Arizona, at 2:12 p.m., on Monday, March 17, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Peter Gavin
David Modeer
Karen Masbruch
Liana Perez

City Manager
Deputy City Manager
Zoning Examiner
Tucson Water Director
Environmental Management Director
Independent Police Auditor

Michael House
Dennis McLaughlin

City Attorney
Principal Assistant City Attorney

Barbara Aragón
Sandra Slate
Dana DeLong

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Gary Stokes, Vineyard City Church, after which the pledge of allegiance was presented by the entire assembly.

Proclamation

Mayor Walkup proclaimed the week of March 16 through 22, 2003, to be "Media Democracy Week".

Colleen Mahoney-Green accepted the proclamation and said that with the consolidation of the ownership of the media and the current events that have unfolded in the world it has never been more important for government, education, community groups and individual citizens to have a voice in the media. The role of the PEG Channel, which includes Channel 12, the educational channel, Pima College, the University of Arizona, and the ACCESS Tucson public access channel, they are critical to a healthy democratic society and the perpetuation of liberty and freedom.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 148, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the time for mayor and council members to report on current events and asked if any member of the council had anything to report.

A. Ward Four Town Hall Meeting

Vice Mayor Scott announced three upcoming town hall meetings hosted by ward four on the budget: Wednesday, March 26, 2003 at the Clements Center from 7:00 p.m. to 8:30 p.m.; Saturday, April 12, 2003, at the Clements Center from 1:00 p.m. to 2:30 p.m.; and Wednesday, April 16, 2003, at Desert Sky Middle School from 7:00 p.m. to 8:30 p.m.

B. Ward Two Town Hall Meeting

Council Member West announced that ward two would host a town hall meeting on March 18 called "Tucson Wizardry of New Inventions". She said the city has a lot of entrepreneurs and innovative people and the meeting would be an opportunity for them to showcase some of the products they have developed. She encouraged everyone to attend and learn about the new inventions that will make their lives easier.

C. Homeland Security

Council Member Ronstadt said delegations from two of Tucson's Sister Cities were in town, one from Pecs, Hungary and one from Almaty, Kazakhstan. The group from Kazakhstan was in Tucson to see how the city deals with homeland security issues, primarily with major utilities such as water and electric. He said Tucson has been presented with an opportunity to expand its Sister Cities Program. It is actually a grassroots citizen-to-citizen program initiated by the Eisenhower Administration, a sort of grassroots diplomacy. It has nothing to do with government entities aside from sponsorships. It is really a citizen-to-citizen relationship. He was presented with an

opportunity when he was in Washington, D.C., to expand the program and he was currently looking for individuals in the community who would be interested in forming a sister city relationship in Iraq and Afghanistan. Anyone who was interested should contact his office. He reiterated that a person-to-person relationship would be initiated with those two countries.

D. Public Forum on Sex Offenders

Council Member Leal announced that a public hearing forum would be held on March 17, 2003 at 7:00 p.m. at Desert View High School on the issue of sex offenders, how notification takes place and ordinary problems or vagaries in the state code or locally that need to be changed to better protect children in the community. His office, in conjunction with Pima County Supervisor Dan Eckstrom and Governor Napolitano's office, had been working closely with the Pima County Sheriff's department and the Tucson Police Department on this issue. He invited anyone who was interested to attend.

E. St. Patrick's Day Parade Update

Mayor Walkup noted that it was Saint Patrick's Day and while he was marching in the parade someone told him that it reminded them of a sunny and bright day in St. Andrews because it was cold and rainy. He said everyone had a wonderful time.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 149, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the time for the city manager to report on current events and he asked for the manager's report.

A. Shuttle Service to Aerospace Arizona Days

James Keene, city manager, said Sun Tran would provide shuttle service to the Aerospace in Arizona Days festivities at Davis Monthan Air Force Base on Saturday and Sunday, March 29 and 30, 2003. People who wished to take the shuttle could board at Park Place, Pima Air and Space Museum, and at Tucson Electric Park. Roundtrip fare was \$2.00 and children under five could ride for free.

B. Diamonback Bridge

The Diamondback Bicycle/pedestrian Bridge was being recognized once again for its engineering excellence. This is the eighth award that the bridge has won, soon to rival Ben Hur and Titanic in recognition. Ty Lin International, the consulting firm that designed the bridge, was being presented with the American Council of Engineering Companies 2003 Engineering Excellence Award. Armando Monteverde, the city's in-house project manager for the bridge, accepted the award for Ty Lin.

C. Investigator of the Year Award

Mr. Keene said Tucson Police Chief Miranda informed him that Margaret Bobbitt, arson investigator, received the Arizona Chapter Investigator's Award for 2002. He congratulated Ms. Bobbitt and the department.

D. 2003 Solid Waste Association Competition

Mr. Keene said the city of Glendale, Arizona hosted the 2003 Solid Waste Association of North America's Road-E-O, with contestants from waste departments all over the state of Arizona, including Phoenix, Scottsdale, Flagstaff, Tempe, and Tucson. The city of Tucson walked away with two, first-place winners and one, third-place winner. Philip Bencomo took first place in the commercial front loader competition, while Filliberto Garcia took first place in the landfill scraper competition. Edward Bonn took third place in the landfill dozer competition. The two first place winners will have the opportunity to represent the state of Arizona in Albuquerque, New Mexico for the national championships to be held in August of this year. He congratulated the drivers from solid waste.

E. Award to Tucson Recycles Program

The Advertising Federation's Silver ADDY Awards were presented to the Tucson Recycles Program. The program includes television outreach, mixed media campaign, and truck signs. The program also received citations of excellence for the logo designed bus benches and television animation design. He congratulated the solid waste department. That concluded his report.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup said he had been informed that some people in the audience had been notified that the public hearing on the proposed parade ordinance would be held this afternoon, however, it was scheduled to be heard during the evening portion of the agenda. It is listed as item number 14 and it was conceivable that it would not be heard until somewhere around 9:00. He asked how many people were present for that item and said if it was not convenient for them to come back, which he suggested they do, he would hear people during this item who wanted to speak on any subject. He said there would not be a call to the audience at the beginning of the 7:30 session, but there would be a call to the audience at the end of the meeting.

He announced that at this time any member of the audience was allowed to comment on any issue and speakers would be limited to three-minute presentations. He said because of the uncertainty of this call to the audience, he would have to limit presentations to no longer than 30 minutes.

A. Tucson Fire Fighters Association Local 479

Mike Rhyner, said firefighters understood the financial issues happening around the country and in the city and they supported the council and the city manager in working out a budget. He said he had been a firefighter for 30 years and he has been involved in union activities for just about that same amount of time on a state, local and international level. He thought he had made a few difference in those years and he was proud of that. He appreciated the professionalism that the city directors, council members, and city managers had shown over the years. However, there comes a time in everybody's life for a change and for him this was that time. He has been the president of TFFA for seven years and he thought they had a very good administrative team in place. He thought in the last seven years they had come a long way in how they do business and he wanted to go out on top of his game. He wanted to spend a little time doing other things. He planned to be around as a city employee and did not intend to retire in the near future.

He had talked to all of the council members about how much he loves Tucson and he would like to see it ranked among the top ten cities. He had talked about annexation issues, making the city bigger and stronger and he offered to help in any way he could. He would still a city employee, he would still be around, he wanted to make the city and its employees better, as well as the citizens of Tucson. His children are growing up and he would like to see Tucson continue in the direction it is going. An election for president of TFFA would be held soon and his resignation had been submitted effective April 30, 2003. The members know he does things straight up, so he thought he should come directly to the council and let them know and thanked them for everything they have done in allowing the TFFA to be a part of that. He thanked the current and past fire chiefs he had worked with and the other city managers. He said he did not like to make prepared speeches and he did not want to leave anyone's name out, but he really appreciated what everyone had done. He had enjoyed the position and resigning would be tough, but it was time for a break. He thanked the council and wished them good luck.

Mayor Walkup said Mr. Rhyner had been a great president, a great leader and a great firefighter. He asked if anyone else in the audience wished to address the mayor and council.

B. Public Hearing, *Tucson Code*, Parade and Assembly Ordinance, Item 14

Tony Novelli, assistant director of the Development Center for Appropriate Technology, a local nonprofit organization, said he was one of the group organizers for the annual All Souls procession, a very large event that is held at the end of the year. They were informed of the parade ordinance and he wondered if the text of the ordinance was available. He was unable to find it on the web site.

Mayor Walkup said yes, and it would be available for Mr. Novelli before he left the meeting.

Mr. Novelli said without knowing the text of the ordinance he was not sure whether or not the procession would be affected. He had received letters from the Tucson Downtown Alliance, the Fourth Avenue Merchants Association, interfaced with the Tucson Police Department.

C. Mayor Form of Government

Robert Reus, said as long as the council was considering the budget, he wanted to remind everyone that the city manager had recommended a wage freeze for city employees. That recommendation came nine months after he took a ten percent raise himself. He thought if the city manager wanted any credibility in the wage freeze agenda, he should give back his own raise, which amounts to ten percent, \$15,000, and also reminded him that there were people in the city who live on less than his raise that totalled about \$185,000 and Mr. Reus thought it was hypocritical of the city manager to say that city workers do not deserve a raise.

Mr. Reus said he returned to Fayetteville, Arkansas for a Christmas vacation where he discussed the budget with some of the city officials there. Fayetteville has saved more than \$100 million in the last ten years with their new mayor/council government. That saved them from facing the kind of financial crisis that Tucson is looking at. His opinion was that in a tighter budget a real mayor and council government

would have avoided the current budget crisis. He said he would be voting only for candidates that endorse the prospect of an election next year to let the voters decide which form of government they want to live under.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH O

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items by letter and title only.

A. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE STATE OF ARIZONA TO INSTALL THE I-10/I-19 FREEWAY MANAGEMENT SYSTEM IN THE TUCSON AREA

- (1) Report from City Manager MARCH17-03-154 CITY-WIDE
- (2) Resolution No. 19530 relating to intergovernmental agreements; approving and authorizing execution of an amendment to the intergovernmental agreement with the State of Arizona to install the I-10/I-19 Freeway Management System in the Tucson area; and declaring an emergency.

B. TRANSPORTATION: ADOPTING TRANSPORTATION ACCESS MANAGEMENT GUIDELINES FOR THE CITY OF TUCSON

- (1) Report from City Manager MARCH17-03-155 CITY-WIDE
- (2) Ordinance No. 9823 relating to transportation; adopting Transportation Access Management Guidelines for the City of Tucson, Arizona; and declaring an emergency.

C. ASSURANCE AGREEMENT: (S01-034) STARR PASS VISTAS BLOCKS, 1, A, B, C, D, E, F1, F2, F3, AND COMMON AREAS “A”, “B”, and “C”

- (1) Report from City Manager MARCH17-03-156 WI
- (2) Resolution No. 19531 relating to planning: authorizing the mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval of a final plat for the Starr Pass Vistas Subdivision Blocks, 1, A, B, C, D, E, F1, F2, and F3, Common Areas “A”, “B”, and “C”; and declaring an emergency.

D. FINAL PLAT: (S01-034) STARR PASS VISTAS, BLOCKS 1, A, B, C, D, E, F1, F2, F3 AND COMMON AREAS “A”, “B”, AND “C”

- (1) Report from City Manager MARCH17-03-157 WI

- (2) The City Manager recommends that, after approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- E. ASSURANCE AGREEMENT: (S02-007) COYOTE PASS, LOTS 1 TO 23 AND COMMON AREAS "A" AND "B", BLOCKS "A", "B", "C", "D" AND "E"
 - (1) Report from City Manager MARCH17-03-150 WI
 - (2) Resolution No. 19532 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval of a final plat for the Coyote Pass Subdivision, Lots 1 to 23, Common Areas "A" and "B", and Blocks "A", "B", "C", "D", and "E"; and declaring an emergency.
- F. FINAL PLAT: (S02-007) COYOTE PASS LOTS 1 TO 23, COMMON AREAS "A" AND "B" AND BLOCKS "A", "B", "C", "D" AND "E"
 - (1) Report from City Manager MARCH17-03-151 WI
 - (1) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR CITY/COUNTY STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS AND FEDERAL AID PROJECT CERTIFICATION ACCEPTANCE PROCEDURES
 - (1) Report from City Manager MARCH17-03-152 WI
 - (2) Resolution No. 19533 relating to transportation; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for development and publication of updated City/County Standard Specifications and Details for Public Improvements and the Federal Aid Project Certification Acceptance Procedures; and declaring an emergency.
- H. INTERGOVERNMENTAL AGREEMENT: WITH THE STATE OF ARIZONA FOR THE I-19/VALENCIA TRAFFIC INTERCHANGE NOISE WALL MURALS
 - (1) Report from City Manager MARCH17-03-153 WI
 - (2) Resolution No. 19534 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement with the State of Arizona for construction and maintenance of the I-19/Valencia Traffic Interchange Noise Wall Murals; and declaring an emergency.

- I. APPROVAL OF MINUTES: May 13, 2002; June 10 & 17, 2002,
September 9, 2002
- J. WATER: ACQUISITION OF SIERRITA FOOTHILLS WATER COOPERATIVE
- (1) Report from City Manager MARCH17-03-158 OUTSIDE THE CITY
 - (2) Resolution No. 19535 relating to water; approving and authorizing the acquisition of Sierrita Foothills Water Cooperative; and declaring an emergency.
- * K. FINANCE: CONTINGENCY FUND TRANSFER FOR SAFE HOUSE PROGRAM
- (1) Report from City Manager MARCH17-03-159 WIV
 - (2) Resolution No. 19536 relating to finance; approving and authorizing the transfer of Five Hundred Dollars (\$500) from the Contingency Fund to Organization 001-183-1838-268, for Safe House Program; and declaring an emergency.
- ** L. FINANCE: SALE OF JUNIOR LIEN HIGHWAY USER REVENUE REFUNDING BONDS, SERIES 2003A (CONTINUED FROM MEETING OF MARCH 3, 2003)
- (1) Report from City Manager MARCH17-03-164 CITY-WIDE
- M. FINANCE: CONTINGENCY FUND TRANSFER FOR BRIDGEBUILDERS 03 PEACE CELEBRATION
- (1) Report from City Manager MARCH17-03-167 CITY-WIDE
 - (2) Resolution No. 19537 relating to finance; approving and authorizing the transfer of Seven Thousand Five Hundred Twenty-Five Dollars (\$7.525) from the Contingency Fund to Organization 001-183-1838-268, for Bridgebuilders 03 Peach Celebration; and declaring an emergency.
- N. FINANCE: CONTINGENCY FUND TRANSFER FOR THE PHILLIPINE MUBAHAY CULTURAL FOUNDATION OF TUCSON
- (1) Report from City Manager MARCH17-03-168 CITY-WIDE
 - (2) Resolution No. 19539 relating to finance; approving and authorizing the transfer of Nine Hundred Dollars (\$900) from the Contingency Fund to Organization 001-183-1838-268, for the Phillipine Mubahay Cultural Foundation of Tucson, and declaring an emergency.

*Removed by Vice Mayor Scott

**Continued to April 7, 2003 at the request of staff

O. FINANCE: CONTINGENCY FUND TRANSFER FOR THE ARIZONA NATIONAL GUARD YOUTH LEADERSHIP RETREATS

- (1) Report from City Manger MARCH17-03-170
- (2) Resolution No. 19540 relating to finance; approving and authorizing the transfer of One Thousand Dollars (\$1,000) from the Contingency Fund to Organization 001-183-1838-268, for the Arizona National Guard Youth Leadership Retreats; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that consent agenda items A through O, with the exception of items K and L, be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Consent agenda items A through O, with the exception of items K and L, were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 165, dated March 17, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

- | | |
|---|--|
| <p>(1) 7-ELEVEN #18981C
3501 E. Grant Road
Applicant: Troy A. Petty
City #005-03, located in Ward 3
Series #10</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |
| <p>(2) MARISCOS CHIHUAHUA
999 N. Swan Road
Applicant: Blanca E. Morales
City #007-03, located in Ward 6
Series 12</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |
| <p>(3) EL CANTARITO MEXICAN FOOD
4695 N. Oracle Road #105
Applicant: Ricardo B. Soto Sr.
City #008-03, located in Ward 6
Series #12</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |

- (4) CHINATOWN BUFFET
5005 S. Campbell Avenue
Applicant: Juntong Lei
City #011-03, located in Ward 5
Series #12

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

Person Transfer(s)

Staff Recommendation

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- (5) CITY LIMITS
6350 E. Tanque Verde Road
Applicant: Bradley J. Nozicka
City #010-03, located in Ward 2
Series #6

Police: In Compliance
DSD: Denied
Bus. License: In Compliance

Person/Location Transfer(s)

- (6) SMOKIN' – A BARBECUE PLACE
4699 E. Speedway Blvd.
Applicant: Robert B. McMahon
City #009-03, located in Ward 6
Series #7

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

(c) Special Event(s)

- (1) SATORI INC., DBA SATORI SCHOOL
3727 N. 1st Avenue
Applicant: Phyllis L. Gold
City #T009-03, located Ward 3

Staff Recommendation

Police: In Compliance
DSD: In Compliance

- (2) ARTHRITIS FOUNDATION
GREATER SOUTHWEST CHAPTER
2960 N. Campbell Avenue
Applicant: Carol M. Chamberlain
City #T011-03, located in Ward 3

Staff Recommendation

Police: In Compliance
DSD: In Compliance

- (3) TUCSON INTERNATIONAL
MARIACHI CONFERENCE
221 S. 6th Avenue
between 12-13 Street
Applicant: Alfonso Dancil
City #T013-03, located in Ward 6

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance

- (4) TUCSON BOTANICAL GARDENS
2150 N. Alvernon Way
Applicant: Cynthia D. Taylor
City #T014-03, located in Ward 6

Staff Recommendation

Police: In Compliance
DSD: In Compliance

*Withdrawn

- | | | |
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| (5) | MUSCULAR DYSTROPHY ASSN.
2970 N. Swan Road
Applicant: Thomas A. Duplain
City #T016-03, located in Ward 2 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (6) | ST. AMBROSE SCHOOL
300 S. Tucson Blvd.
Applicant: Sylvia M. Belda
City #T017-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (7) | KOKOPELLI WINERY
534 & 536 N. 4 th Avenue
Applicant: Donald L. Minchella
City #T019-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (8) | CHICANOS POR LA CAUSA TUCSON
3700 S. La Cholla
Kennedy Park Fiesta Area
Applicant: Otilia Arvizu
City #T020-03, located in Ward 1 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

(d) Extension of Premises

- | | | |
|-----|---|--|
| (1) | BISON WITCHES BAR & DELI
326 N. 4 th Avenue
Applicant: Thomas R. Partridge
City #EP06-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (2) | PLUSH
340 E. 6 th Street
Applicant: Maebelle Reed
City #EP08-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

Kathleen S. Detrick, city clerk, noted that the previous recommendation for denial on the application for a new liquor license for Mariscos Chichuahua has been changed to one of approval. The application for a person transfer for City Limits had been withdrawn.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Vice Mayor Scott, and carried unanimously by a voice vote of 7 to 0 that liquor license applications for #18981C, city #005-03; city #007-03; city #00-803; city #011-03, city #009-03; city #T009-03; city #T011-03; city #T014-03; city #T016-03, city #T017-03; city #T019-03; city #T020-03; city #EP08-03, be forwarded to the state department of liquor licenses and control with a recommendation for approval.

8. ZONING: (C9-01-22) NEW WORLD HOMES – HOUGHTON ROAD, SR TO R-1

Mayor Walkup announced that city manager's communication number 160, dated March 17, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9824 by number and title only.

Ordinance No. 9824

Relating to zoning: amending zoning district boundaries in the area located on the northwest corner of Old Spanish Trail and Houghton Road in Case C9-01-22, New World Homes – Houghton Road, SR to R-1; and setting an effective date.

Mayor Walkup asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member Ibarra, that ordinance no. 9824 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9824 was declared passed and adopted by a roll call vote of 7 to 0.

9. RIO NUEVO PROJECT: GRANT APPLICATION FOR FEDERAL BROWNFIELDS FUNDS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Mayor Walkup announced that city manager's communication number 169, dated March 17, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19538 by number and title only without objection.

Resolution No. 19538

Relating to redevelopment; approving and authorizing submission of Grant Application to the U.S. Environmental Protection Agency for federal Brownfields funds for the redevelopment of various sites within the Rio Nuevo boundaries; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that resolution no. 19538 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott said she knew that when the city of Tucson makes application to the Environmental Protection Agency, or other federal agencies, there is usually a stipulation that the public be involved.

Karen Masbruch, director of environmental management, said the public had been involved and staff met with the Rio Nuevo Citizen Advisory Board. They also met with the Menlo Neighborhood Association and planned to provide updates to the mayor and council subcommittee. Additionally, they met with Environmental Planning Advisory Committee (EPAC) and the Pima Association of Governments.

Vice Mayor Scott asked if staff would keep the council informed through the committees and asked if there was any other way that the public might know how to keep track of the application if they have an interest. She asked if there was a web site.

Ms. Masbruch said no, but that was a tremendous idea to add a link to the Rio Nuevo site and it was under consideration. If the funding is granted, staff could put together a web site.

Vice Mayor Scott said she appreciated that and wanted to make sure that it was made part of the public record.

Mayor Walkup asked if there was any further discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19538 was declared passed and adopted by a roll call vote of 7 to 0.

10. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 147, dated March 17, 2003, would be received into and made a part of the record. He asked if there were any appointments.

It was moved by Council Member Dunbar, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0, to appoint Kenneth Cooper to the Armory Park Historic Zone Advisory Board and Murray A. Handler to the Veterans' Affairs Committee.

Mayor Walkup asked if there were any additional appointments.

Council Member Dunbar announced her personal appointment of James Michael Humphrey to the Community Development Advisory Committee.

RECESS: 2:43 p.m.

Mayor Walkup announced that the council would stand at recess until 7:30 p.m. when it would reconvene in regular session.

RECONVENE: 7:39 p.m.

Mayor Walkup called the meeting to order and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol W. West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Vice Mayor Ward 4
Steve Leal	Council Member Ward 5 (arr. 7:50 p.m.)
Fred Ronstadt	Council Member Ward 6
Robert E. Walkup	Mayor
Kathleen S. Detrick	City Clerk

Absent/Excused:

None

11. PUBLIC HEARING: CITY OF TUCSON RECOMMENDED BUDGET FOR FISCAL YEAR 2004

Mayor Walkup announced that city manager's communication number 163, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the first of two public hearings to be held on the city of Tucson recommended budget for fiscal year 2004. The second public hearing was scheduled for April 28, 2003. He asked for staff's presentation.

James Keene, city manager, said he knew there were a number of public hearings on the council's agenda, so he would be very brief. He wanted to show three quick slides just to restate the context for not only the city's budget deliberations, but for the public comment that the council would receive. He said the budget crisis that the city was in affected its general fund and the general fund budget was, this year, \$382 million. A pie chart was displayed that showed where the spending of the city's general fund goes. Seventy-five percent of the city's budget goes to cover police, fire, and judicial, which is public safety; transit, which is the bus system; parks and recreation; solid waste; and libraries. Forty-six percent of the direct services in the city's general fund budget go directly to public safety. Taking some of the overhead costs into consideration puts it closer to 50%, so it puts into perspective some of the difficult choices city officials have in balancing a \$43 million budget deficit. The recommendations that he made to the council cut about ten to 11 percent out of general support and other services, and about three

percent out of other important direct services. He said the city was looking at a \$43 million deficit for the coming budget year, and even if that was balanced with permanent on-going cuts, it would still be facing a \$26 million deficit in fiscal year 2005, and \$12 million deficit after that. The real picture was \$81 million worth of budget balancing that had to take place over the next three years. He said none of the recommended budget dealt with program expansion or the backlog of problems in the city.

Lastly, the schedule that the mayor and council had set consisted of this public hearing on the recommended budget and over the next couple of weeks the council would have detailed work sessions on the different service areas. There was a potential for another public hearing on things such as parks and recreation fees or, pending the outcome of this hearing as to what the mayor and council think, the budget wrap up, final adoption, and prior to that, another public hearing before the council adopts the budget and sets the property tax. There were a minimum of three public hearings and he knew there were going to be a number of town hall meetings, Vice Mayor Scott mentioned three in ward four over the next couple of weeks. He said that was all he wanted to do by way of an introduction.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He had received a number of written requests from persons wishing to speak and said he would call on them in the order in which he received their requests.

John Byrings, a member of the Tucson-Pima Public Library Foundation, said he realized that the council was in the process of deciding the budget for next year and that was an extremely difficult task given the current financial situation. He also realized that it was only fair that all areas of the budget face their share of any necessary reductions. On a much smaller scale he said as the president of a computer software company he had to face some very painful choices in his budget this year. He wanted to point out that in many areas the library had already been bearing the budget reduction burden. He did some calculations and per capita spending, adjusted for inflation, had actually decreased over the last eight years from \$17.98 to \$17.30, but the more frightening numbers were in the comparison of Tucson to other communities. Tucson ranks 45 out of 50 similar cities in the number of library books per capita and Arizona as a state ranks 50 out of 51 states plus Washington D.C., in the same measure. The library system already had carried its share of the burden and further significant budget cuts would severely hurt an already difficult situation. The budget reductions proposed by Mr. Keene were painful, but realistic. They would result in the delay of the openings of two planned libraries, and would not allow for any increase in new materials purchased and would reduce staff levels so that some services may not be as readily available. However, the proposed cuts would not result in drastic reductions in the programs that are offered to the community. The foundation urged the council to accept the recommended library budget and also to support the requested .7% for a penny and a half increase in the county library district tax to offset further potential shortfalls.

Jayne Kuennemeier, president of the Tucson-Pima Public Library Board, thanked the council for taking the time to listen and Mr. Keene for his recommended budget for fiscal year 2004. However, she said it was hard for the library system when they do not get yearly increases in their book budget, which had been at \$2.7 million and they've been trying for years to get it to \$4 million. It is also hard

not to get money for librarians. The Tucson Public Library is 50% below benchmark in the number of librarians for its population. Because the use of libraries goes up in bad economic times there is a 26% increase in questions called to the library. They expect 1,654,000 questions on the info line. People call 791-4010 and ask any question they want and the library staff will find the answer, except of course if they would get rich or beautiful. It is difficult to run on last year's money when two new libraries had opened, four had been expanded, and two more were in the planning stage. People wait in lines for computer use and it is not unusual to have more than 400 people waiting for a best seller. A reduction means loss of hours of operation, fewer story times, less homework help, and less research help. If someone needs help with a resume, there may be no one available.

She continued that the TPPL system is already near the bottom of money spent to support it when compared to library systems in cities and counties of like size. The library has 17 fewer full time employees and a shortfall of \$737,000, and if the county cannot pay their suggested increase, it would mean a loss of 15 more. She hated to play "ain't it awful", but the dangers of deferred maintenance, excessive workloads, the diminished quality in the number of books and materials, and limited long range plans must be considered. The library is under-built by 180,000-square feet. That is nine libraries the size of Wilmot Library. She wanted to communicate the value and benefits of the library. It serves children, over 3,600 story times, adults, and the business community, home schooling, teachers, and the media. The article on air conditioners and coolers came from the questions asked of the library staff. Library staff work with the economic councils, junior leagues, SCORE, chambers of commerce, serve rural areas with bookmobiles, books by mail, and homebound services. Libraries help close the digital divide by providing computers for a public user in every library. Library staff work with schools, visits and tours. Neighborhood groups seek their help, as do nonprofit groups.

The Main Library has two special collections on Arizona history and culture of the Southwest. In fact, they have just been given a collection from the De Grazia Foundation. The main library and outreach units cooperate with festivals and community events and every year library staff check out more than five million books, videos, audio tapes, and other materials. They have book clubs, lectures, and discussion groups. She did not know how the current staff gets all of that done, particularly since the library is a little short. They cannot afford to be shorter.

She asked the council not to cut the library budget. She thanked them for working closely with the Pima County Board of Supervisors and encouraging them to assist the library system in the coming year by putting up just a little more than their usual half share so that the library hours would not have to be cut. She hoped the council would ask the board of supervisors to please collaborate with the city and the library board by agreeing to establish a joint library task force to review major issues on planning, governance, and funding, as well as a new strategic master plan that library staff was completing.

Sam Zelman, said he is also a member of the library board and he appreciated the city manager's relatively gentle touch, it could have been worse. The city manager's budget proposal wounds the libraries somewhat, but spared its vital organs. He hoped that when times improve the libraries would recover completely and keep on growing. The economic and cultural competitiveness of Tucson requires no less. To attract industries that pay good salaries, libraries as well as schools must

produce and nurture a skilled and well-informed workforce. As city services are further whacked away, he asked the council not to forget that the libraries are still suffering from the severe whittling down of last year. To illustrate the importance of libraries to the vitality of American life he wanted to tell a couple of true stories from the past. In 1848, a boy named Andy arrived with his destitute parents from Scotland and settled in Allegheny, Pennsylvania. Andy found work as a bobbin boy in a cotton cloth factory at a \$1.20 a week. He took advantage of the hospitality of an Allegheny citizen who opened his personal library to working boys. In no time, Andy became a voracious reader.

This was the land of opportunity. By the age of 30, diligent Andy made it big in iron and oil. Success followed success and at age 66, as head of a giant steel empire, he retired to a life of philanthropy. Because his love of reading filled in for the formal education he never had, Andy devoted the rest of his life to providing reading opportunities to the public regardless of circumstances. He endowed literally hundreds of free public libraries, including Tucson's first in 1893. Many still bear his name, Andrew Carnegie. Among the millions who found inspiration and even a new life in one of the Carnegie libraries was a boy named Jack, born in San Francisco in 1876. At the age of 14 his schooling ended so that he could help support his family. He found work in a fish cannery in Oakland. His was a lonely childhood, he later recalled, with books as his only companions and the Oakland Public Library his sanctuary. One of the librarians, the first cultured young woman to enter his life, was especially helpful and encouraged him to write. She had known Mark Twain and Burt Hart and Jack was impressed. That Jack was Jack London, who became one of the great American novelists of the twentieth century.

Mr. Zelman said today's libraries continue in that tradition, serving as gateways to greater knowledge and career advancement, or simply offer the satisfaction of learning about life by curling up with a good book. Carnegie and London were school dropouts. Sad to say, Arizona has more than its share of school dropouts. Many of them live to regret dropping out and turn to libraries to help them catch up on the learning that they missed. They study, they move on to greater opportunities, start businesses, and become more productive, tax paying, citizens. For them, the American dream lives. The quality of its free public libraries is a measure of the cultural level of a community. He said he could not have prepared his speech without research at the library. For him, life-long learning is not just a bumper sticker. It is an opportunity open to all. Some day, even the people of Iraq will know the meaning of a precious resource in a free society, truly free and uncensored public libraries. Tucson and Pima County have them and they should be kept strong and healthy. Libraries get people through times of no money better than money gets them through times of no libraries.

Isaics Rendon, said he is a senior at Amphitheater High School and he had been working at the Woods Library since he started volunteering in the summer of 2001. That summer he became involved in the summer reading program. That program made it possible for parents and children to enjoy the love of reading. The memories cannot be explained when children's faces light up every time they receive a stamp and prize for reading a certain number of books. It was the love of reading that drove them to read 40 or more hours and that, unfortunately, may end. Children will be left to the public media and television to educate and stimulate their senses through violence and degrading desensitization. Elimination of the program cannot happen. During the summer children have two options, either read a book or watch television. The library's effort to eliminate option two must be a fact in the upcoming year. The voice of the library in all of the Tucson community must be heard. He participated in the program

of Teen Advocacy to make presentations to middle schools. The goal of the program is to tell students what the library has to offer, such as homework help or the info line. Many children do not even know there is help outside the classroom. It is still undecided whether or not Teen Advocates will be able to continue visiting local middle schools next year. Children who need libraries must not be abandoned. A child's education is not equivocal to dollar signs. He asked the council not to eliminate the programs that are the stepping stones for future generations.

Richard Cook, said he votes and he supports the library. He thinks libraries are fantastic and he has used them a lot during his life. He looked at the pie chart Mr. Keene displayed and realized that the smallest part of the city was taking the biggest hit. Yes, the citizens of Tucson have to be protected, and all of the other things have to be done, but he belonged to that small group taking the heaviest hit. They are the ones who, when the council's lights do not work, come in and fix them. When the outlet in Mr. Keene's kitchen does not work, they fix it. They keep the city running. They fix the police cars, the fire trucks, and take care of the city's offices. They are the invisible workers. People do not see them or think about them and they do not realize what they actually do. He said they keep the city running. The mayor and council members do not keep it running. They can sit up on the dais and say whatever they think, but if the maintenance is not done on the equipment and on the buildings, the city does not function no matter what they say. If things are not taken care of, they fall apart. He thought the manager needed to take another look at the budget. His group has taken a hard hit in the past and they have not recovered. He thought the manager needed to sit down with the frontline employees, not the office employees, and have some honest discussions and find out because they do know how to cut the budget, how to save money, streamline services, and give better services. The manager needed to listen to them.

Mary Beth Haralovich, said she is a professor at the University of Arizona, teaching film and television and directing the internship program in the department of media arts. She was present to talk about the film office. Over the past five years, her department and the film office have established a wonderful town and gown relationship. The film office helps students become part of the production scene in Tucson. Hardly a film comes to town that does not have one of the university's interns working on it, or even ten of their interns on it. The students learn a lot from their relationship with the film office. The producers call and tell her they heard about the program through the film office staff. The film office provides permits for the students; they help the students get their films made as part of that professional experience. They have over the last five years cultivated their alumni in Los Angeles who are working in film. They have a regular alumni reunion with the film office. The film office staff has given generously of their time going to the classroom and helping the students prepare for their lives in the profession. Ms. Haralovich could not think what they would do without the film office. The staff has been very important, helping the internship program grow and develop its students. She thought the move to the Tucson Convention and Visitors Bureau was a good idea. It was a good solution and should be retained. Working with them has been a tremendous experience. They contribute a great deal to the film culture of the town, including bringing students from Tucson, Arizona and from out of state in the fabulous life of film production.

Tim Flood, said that as a native Tucsonan he also wanted to support the retention of the film office, plus improve the quality of the services it offers. He has been involved in the film industry on and off, full time and part time, since 1980. The current staff at the Tucson Film Commission has always provided great services to his clients. During the last eight years, he did location scouting and management on a part time basis, and before that he did it on a full time basis. Shelly and her crew have been there to provide tremendous service for him and his clients. Their job has been to promote and provide organizational support to film companies that come to Tucson to do not only feature films, but television commercials and still photo shoots. The current staff had been tremendous in helping his clients over the last five years or so. If there was a plan to move the film office to the Tucson Convention and Visitors Bureau, he thought it would improve the quality of the physical site and hoped the council would support it. The film commission has a high profile office downtown and the current office is very low profile with not much room for clients. He thought a move would be great. He also urged the council to explore what is going on in other places. A good place to look at would be New Mexico, which is making tremendous efforts to expand its regional capacity to support the film business because it brings a lot of good, clean money to the state and to Albuquerque and Santa Fe. He suggested the staff look at the ways that state has raised revenue for expansion of their film office. He thought the dollars spent would be a great benefit to Tucson and bring in more tax dollars.

Ronald Anderson, said he is a small business owner. He owns Misty Production Services. He moved to Tucson about 11 years ago and he loves it. The film community is great. Working with Shelly, he gets a lot of referrals from the film office. He belongs to different unions; Arizona Production Association is one of them. He advertises in their publication, but he gets a lot more referrals from the film office. Everyone who comes to Arizona to film knows about the city's film office and the film commission. They do not know about the other associations that he belongs to. He thought it would be a shame to cut their budget or eliminate them, as the state has done. He understood the state has eliminated its film office, or cut its budget drastically. Potentially, movie companies come to Tucson with budgets of \$100 million and they spend a lot of it here. They need the services of the film office to help get permits, help them find places, crews, and equipment. He thought it would be wrong to eliminate the film office. The movie business is very cyclical. It is up and down. He has been in Tucson for 11 years and every year is different. He hoped the new office that they are being moved to works out for them.

Ed McCain, said he is a still photographer. He does not film movies; he takes pictures like the ones in *Arizona Highways* and *Sunset Magazine*, and for advertisements. He wanted to relate a recent experience he had with the Tucson Film Office. About a month ago, he received a call from an advertising agency in Chicago offering him the biggest job of his career. They wanted him to do an advertisement for Degree antiperspirant. He said there is a lot of money in antiperspirant. When he got the job, within a matter of two weeks he had to find three locations for the photo shoot. He said it was funny, but when a zero is added to the end of his fee his heart starts to pound and he knows he needs to get the job done properly, to do the best job he can. One of the places he went was the film office, and he talked to Shelly and Peter. They were a great resource. Mr. McCain said the advertising firm was looking for a lake. They were doing an ad for the Degree Iron Man series, so they were doing pictures of people swimming, bicycling, and running and of course, Tucson has good talent for that. Through the film office Mr. McCain was able to do his shoot. He was really grateful for

their efforts. As he visited people, not to say that they were not pleasant or cooperative, but they had no idea what he needed and they did not understand the pressure he was under regarding the time frame. The film office was able to cut through the red tape, get the locations, the permits, get things signed, get the insurance papers together. They were very instrumental in the success of his shoot and he did not know if he could have done it without them. He had a crew of 14 people on that shoot and his feeling was that in a couple of days they brought a lot of money to Tucson. He knew there were a lot more stories and the people in the motion picture business spend a lot more than that. He hoped the council would keep the film office open and give them the resources they need to market Tucson because it is a beautiful place, a great place to shoot pictures and do filming. The city needs to get the message out, not shut the film office down.

Linda Bohlke, representing the blue collar workers of the American Federation of State, County, and Municipal Employees Union, said she recognized this was a very difficult budget year for municipalities and local governments around the country. She hoped the mayor and council would take a brave stand when it comes to federal dollars that are no longer coming into local governments. When the federal government spends a billion dollars a day in an insane march towards war it means that services like parks and recreation in cities like Tucson are being cut, as well as other services, such as garbage pick up. There is a direct correlation because it is an issue of job security for employees.

She wanted to address the issue of the 139.5 jobs that were recommended for elimination by city management. Many of the city's employees were already overworked and underpaid. She understood that there were budget constraints, but she thought more creative ways of balancing the budget should be found than continuing to put it on the backs of the people who work for the city whose efforts help the city work. By eliminating the positions, fewer people will be asked to do more with a whole lot less. She reiterated that she understood the budget constraints and a pay freeze for employees, but she represented the blue collar unit so she wanted to be really clear about what that meant. It meant a pay cut and while she understood that the city would pick up increases in health care costs as far as premiums go, and increased pension costs, what would not get picked up was the increase in out-of-pocket expenses that go up every year. For employees who live paycheck to paycheck it is a significant cost. She thought management needed to recognize that when they talk about a pay freeze. Remembering the difficulty in this budget year, she said when talking about service reductions some of the work that is done is not often visible, but becomes visible when it is not being done.

Speaking as a mother and citizen of Tucson, Ms. Bohlke said it concerned her when the maintenance of parks is cut. That is one of the areas being considered for budget cuts and that is scary. She and her son use the parks. Employees pick up broken glass and mow weeds and when that is not done the kids get hurt. It means that the parks are no longer a safe place for children to play and people need to look at exactly what that means before making the very difficult decisions about the budget. She applauded the efforts to raise revenue as opposed to continuing to cut services, but she thought they should also look at how much is being spent on contracting out services. She applauded the council for doing recycling in-house, and asked how many more services are contracted out, such as groundskeeping. She asked the council to take a hard look at that and see if can be done cheaper in house. As they go forward and someone proposes that operations and maintenance of vehicles be contracted out, she asked the council to look at how much more it would cost the city and if they afford not to have public accountability.

Erl Kimmich, said he was sad about Tucson's budgetary shortfall. He was sad to hear about the proposed cuts. He thought Mayor Walkup was the most qualified person in the history of Southern Arizona, more than Geronimo or Wyatt Earp, to travel to Washington and get the money that Tucson needs. He pointed out that perhaps the country should be grateful to Turkey for refusing the \$15 billion that the government offered them to plant missiles there. Of that \$15 billion, Tucson's shortfall represents a small three tenths of one percent. He said he was really serious about this. The money is available, it did not go to Turkey, and it has not been dropped into the desert or the cities. There is money there and it will be spent. He thought Mayor Walkup, given his background, was particularly qualified to go get that money. He is the mayor and Mr. Kimmich hoped he would go and do that. He said Tucsonans would back him up, that he would go to Washington with the mayor and do whatever it took. The money is there and Tucson needs to get it.

Robert Reus, said he was at the afternoon study session when Council Member Ronstadt asked a very pertinent question that Mr. Reus thought had not been adequately answered. Council Member Ronstadt made the statement that in the five years he had served on the council, the budget process had not reflected the values and priorities of the city of Tucson. He asked when would the budget process reflect the values and priorities of the city of Tucson. Mr. Reus said no one gave a satisfactory answer and he thought he was probably the most qualified person to answer. The budgeting process for Tucson will reflect the priorities of the citizens when it has an elected, administering, executive mayor with the support of the people who voted for him or her, standing on the platform that got him or her elected, doing the budgeting process, and not until then. He had seen it work under the old city manager form of government in Fayetteville, Arkansas. He watched it very closely under the new mayor and council government, which he initiated, in Fayetteville, Arkansas for the past ten years. He said he had been bragging for the last three years that the city of Fayetteville saved \$100 million in those first eight years, and it was true. Fayetteville is a little more than ten percent the size of Tucson, so imagine what Tucson could save. He said he was going to go a little further and be a little audacious because the only way that he could explain how he thought Tucson should deal with its budget shortfall was to explain what he would do if he were the administering mayor, putting the budget together and administering the city.

He said the first thing he would do would be to sit down with each department head individually and pick their brains regarding what could be done to make each department work more efficiently. The second thing he would do would be to call all of the department heads together on a weekly basis and do brainstorming sessions, once again to see what kind of consolidation and efficiencies could be made to run the city government. The third thing he would do would be to sit down and go over the budget and cut out all of the waste item by item. If, after all of that, the city was still facing a fiscal crisis he would go and ask the city council to call an election for a very temporary two or three year sales tax increase, strictly to get the city through the crisis. Finally, having asked and got a sales tax increase, he would be sure that it did not have to be extended beyond the initial three years by going out and recruiting clean, socially responsible industry to the city and promoting the city as a fun, safe, place to vacation to build up the economy. None of that would happen until Tucson had a new city government and it was the only long-term solution to the problems the city faces.

Richard D. LaPoint, said the past two years had borne witness to some very unprecedented times, as even the mainstream media admits: The unprecedented attack on the United States on September 11, 2001, the unprecedented revocation of civil rights following that, the unprecedented policy of openly advocating nuclear weapons as a first strike weapon, and the unprecedented position of the Bush administration in regards to attacking Iraq, a small nation the size of Texas of 23 million people who have suffered greatly under the U.S. and British enforced United Nations sanctions for the past 12 years.

Following these unprecedented events had also been an unprecedented uprising of the people against this preemptive war on Iraq. He urged the mayor and council to do something that was not unprecedented. The citizens of Tucson who oppose the preemptive war ask the mayor and council to join 151 other municipalities in the United States who had passed a resolution against the preemptive war on Iraq. The resolution would not be anti-American. Many citizens consider it to be more pro-American than the current administration's policy of world wide enforcement and conquest. The resolution would not be anti-truth. While there is great opposition to the reckless policies that have placed the nation's men and women in uniform in grave danger, they have the unconditional support of each and every U.S. citizen whether they are opposed to the war or for it. It is time for Americans to take a deep breath, step back, and think about what they are doing to the world. He submitted copies of the proposed resolution.

Mayor Walkup asked if anyone else wished to address the council.

Pat Malco, said she had a copy of a declaration that a previous mayor made, "Peace in the Balkans Month". Because the previous mayor was willing to declare a month of peace, her group was able to send copies of the declaration to Washington and each of the embassies. One of the embassies was sufficiently impressed that they sent a delegate to Tucson because of that single proclamation. These things affect the world; they reverberate outward, just as those balloons that 1,500 people used for their demonstration in Agua Prieta when they headed north affected the people of Tucson. The signal being that they as people on this planet wanted peace. They wanted to conduct themselves in a peaceful way. When a person is dead they can no longer conduct themselves. It is just that basic. There is plenty of time to do something other than kill one another.

Mayor Walkup asked if anyone else wished to comment. There was no one. He asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0 to close the public hearing.

Mayor Walkup said the council did not need to take any action on the recommended budget and reminded everyone that the second public hearing on the budget would be held on April 28, 2003.

12. PUBLIC HEARING: PROPOSED WATER "SYSTEM EQUITY" FEE

Mayor Walkup announced that city manager's communication number 161, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on the implementation of the proposed water system equity fee. He asked for staff's presentation.

David Modeer, director of Tucson Water, said he would give a brief introduction on the water system equity "buy in" fee so that people would understand what the fee is and how it was developed. Tucson Water's capital improvement projects that provide new capacity are constructed in large increments in order to gain the efficiencies from building for the future. As a result, expansions are constructed years in advance of when the added capacity will be fully utilized. New customers benefit from that extra capacity, built without having to make some of the same investment in that infrastructure that current customers have made. During development of the city's fiscal year 2003 budget, the mayor and council identified growth and the underlying costs of development as one of the city's six strategic plan focus areas. In response, staff has identified appropriate development related fees. The first of those was the plan review and inspection fees to recover those costs at their full costs of service. Those were implemented in July of 2002.

In developing this system equity fee, staff worked over the past 12 months with the rate consultant, the city attorney's office, the Citizen's Water Advisory Committee and the customer rate design group, which is comprised of members of all of Tucson Water's customer classifications, weighted toward the residential class, which is more than 90% of the customers in the system. Both the Citizens Water Advisory Committee and the customer rate design group, which have representatives inside and outside the city, have agreed that the fees are an appropriate way to assess the cost of providing for capacity in the system for future growth. This study meets three goals in producing this fee recommendation. It provides for an equitable and proportionate distribution of the costs between current and future customers. The methodology utilized in developing the proposed fee is one that is approved by the American Water Works Association, the authoritative resource on the development of such fees across the country on both the technical and financial operations, and it complies with and meets the standards set by the state of Arizona Statutes relating to fees of this nature. The fee addresses only facilities that are constructed to provide capacity to serve future customers. Other investments that are not there to provide for future capacity have been removed from the calculation. Examples of those would be developer contributions for the construction of new facilities and subdivisions, unused facilities, such as the current Hayden-Udall Treatment Plant, which is not in use at this time, and any other investments in the utility that do not provide service for future utilization of new customers. The proposed fee has been calculated using Tucson Water's current investment in the system infrastructure and its existing capacity.

Mr. Modeer said the fee varies by meter size from the 5/8-inch meter, which is the normal meter size used by a residential customer, which comprises 90% of the system or customers. Ninety-nine percent of Tucson Water's customers use a two-inch meter or smaller. There are very few large meter users in the city, a few industrial complexes use larger meters. Fees of this nature are extremely common, both throughout the country and the state of Arizona. The national average for a water system fee is \$1,758. In Maricopa County, Phoenix, Scottsdale, Glendale, most all cities in Maricopa County have fees substantially in excess of the one being recommended in the proposal before the council. It is recommended at \$1,416. Locally, Metro Water has an infrastructure resource fee of \$1,188. Oro Valley's is \$2,074. Most cities locally and throughout Arizona have such water resource fees. The fees would be applied equitably across the system. An exception would be for the one contracted area that was done many years ago in the Pepper Tree Ranch area, which would still have to adhere to the contract that was signed by the city in the early 1990s. The existing southeast, southwest, and northwest area

specific fees would be eliminated and the new fee would be applied equitably across the system. It is anticipated that if growth continues at the projections made by the Pima Association of Governments and the University of Arizona, 5,900 new water meter connections on an annual basis would generate about \$8 million. These fees would be used solely to fund the repayment of existing debt service. They would not go to future investment in the utility. The benefit to the customers throughout the system is a lower need for annual revenue increases. Without the system equity fee, annual revenue increases in order to maintain the system and keep up with inflationary pressures would be approximately three percent. With the spreading of these costs to the new developments where the costs are being generated, the rates that would apply to the average customer would only be about one percent a year or two percent every other year. If other things develop in the water arena, particularly related to the acquisition of Central Arizona Project Water, as that price decreases these fees could become less in the future. If the mayor and council adopt the proposed fee on April 7, staff would return for the approval of a new financial plan reflecting the collection of the fees in the future.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He said he had received a number of requests from people wishing to speak and he would call on those people in the order in which he received their requests

Philip F. Salva, director of construction for Habitat for Humanity in Tucson, said there are a growing number of families who are unable to afford housing. Tucson Water had recently instituted a policy regarding subdivision development that forces all developers to pay an engineer to design a water distribution plan per Tucson Water's specifications, which is then submitted to the water department for review and approval. The review process carries a fee based on the number of units and the developer pays for that process. Tucson Water is asking for an equity fee of a minimum of \$1,400 for a 5/8-inch meter. This fee is based on expected uses and it is common sense to expect a five bedroom, three bath house in the foothills to use more water than a three bedroom, two bath house in South Tucson. He asked where the equity was. Tucson Water already had a fee schedule in place that developers adhere to for every house they build based on a variety of factors. The fees range from \$300 to more than \$1,000 depending on whether it is a simple meter installation or street cuts are involved. The proposed fee makes three fees that developers pay for water and they do not represent any new improvements to the system. There is talk of a system enhancement fee that is to be levied sometime within the next 18 months. The above mentioned fees are only for water. They do not take into consideration the recent rate hike for development services or the increased cost for Pima County Wastewater, which would be going up again in the near future. Adding all of these costs onto the price of a home would make it impossible for a growing segment of the population to own a home. Increasing water use fees across the board would be a more equitable solution.

Ruth Beeker, representing a large majority of the Miramonte Neighborhood Association, said they support the proposed fees. They felt that it was very important that the people who benefit pay the costs. Over the years her neighborhood, which is an established neighborhood located south of Speedway between Country Club and Alvernon, has been subsidizing the growth that is taking place out and up around Tucson and those people who live in the middle of town just keep paying. They were delighted to see that finally a proposal was being made that begins to make development

pay for itself. She heard the arguments from the construction industry that the fees would price the low income, first time homebuyer out. She said that was one population and she thought it was a small population compared to the people that had been paying the additional fees all along. Her neighborhood had renters who live in very low rent, no lease apartment complexes, they had senior citizens who own their houses but live on fixed incomes and those were not people who should be asked to subsidize development in Tucson. She wanted to see the playing field leveled. Over the period of time that the city has been looking at the needs of the developers, it has been neglecting the needs of existing neighborhoods and putting that back in balance was something her neighborhood supports.

Priscilla Storm, representing Diamond Ventures, said she was not present to speak in opposition to the proposed water equity fees, although she had an opinion and a few suggestions. However, she wanted to speak to the comments that were made about the situation in the Middle East. She considered herself to be a comfortable public speaker. She had family and people that are very dear to her that have been deployed and were in the Middle East, waiting and wondering what was going to happen. She had three young men there, who were little boys to her, serving in the Airborne Rangers, that she wished were home, so as people try to deal with the business of running the community, the budget deficit, the water equity fee, they were preoccupied with that situation. She thanked staff and the consultant; she thought they did a great job. She read the five-pound version and there was a lot of great information in it, all in one place for the first time. The inventory on the capital improvements and the water system was incredible and contained great detail. Regardless of how the proposal moves forward, it was a wonderful baseline for everyone to have and use. She thought that was a great job. She thanked the council members, most of whom either did not take her calls because they were in water equity fee meetings with someone else, or at least took the time to talk to her about the water equity fee, asked her questions, picked her brain and allowed her to pick theirs. She thought that was very beneficial.

Her company would like to see three suggestions incorporated in the proposal. One has to do with how the city handles waivers, exemptions, or exceptions. She said she was familiar with the statutory challenges to how that was done or structured. For the urban in-fill areas, or the Department of Housing and Urban Development zones, they wanted to see a fee waiver policy developed and approved offering incentives to both business and residential development in some of the areas that have already been prioritized for the city. She knew it had some legal challenges in terms of how to structure the policy. Second, Diamond Ventures liked the geographic water service areas as opposed to an average fee because they would not want to see certain geographic areas subsidizing others, so while they recognized that \$1,400 as an average fee for a 5/8-inch line might be appropriate, as the council considered incentives for certain geographic areas, or as they analyzed the capital system and there was excess capacity in certain areas and not as much in others, they would be more comfortable in keeping the zoned approach in terms of geographic water service areas, even if it got the city to the same point. Lastly, although they recognized that the proposed fee is for debt service for capacity that currently existed that future development would use as opposed to capital infrastructure, from reading that she had difficulty in determining if there will ever be an instance where the city would actually be paying debt service and not providing excess capacity. So, in that direct relationship, and again, that may go back to the geographic areas, she asked if staff was sure that the fee paid for capacity that the future

development was going to use as opposed to debt service, or correcting any deficiencies, or making up for anything in that instance. She said it was much easier to talk about water equity fees than to talk about the Middle East.

Kathleen Longnecker, wanted to echo Ms. Storm's comments on the Middle East. Her husband is an Air Force staff sergeant, who is currently on active duty and deployed to the Middle East. Like everyone else, she was not anxious for war, but she was very proud of what he was doing for the United States. As the executive director of the Metropolitan Pima Alliance (MPA), she knew many of the council members were familiar with it and before making her comments regarding the proposed fee she wanted to read their mission statement. "The Metropolitan Pima Alliance is dedicated to improving the quality of life and the economic viability of Metropolitan Pima County. The alliance will strive to create dialogue among diverse groups to promote sound community planning solutions." MPA membership represents 75 public and private organizations and approximately 7,500 employees, representatives and members, who vote, pay taxes and raise families in the community. They were adding members at a rapid rate and one of the reasons they were growing so quickly, and the reason the alliance was formed, was a concern for the quality of dialogue that existed among groups that held strong and frequently opposing views on critical community planning issues. Her organization wants to be part of the solution and when appropriate, challenge its members and the council, their elected leaders, to think and act differently in the community's best interest. MPA's goal is to create better dialogue, build more of a consensus, and take informed positions on key issues. She was not present to oppose the water equity fee. She was present to ask questions on behalf of the alliance's members, many of whom are small companies, mom and pop businesses, that potentially could be damaged by what seemed to be a steady stream of miscellaneous fee increases and impact fees. She asked how someone would obtain a waiver of the fee when just cause could be shown that a waiver is deserved or that it was in the public's best interest to grant a waiver. They were very concerned that without the ability to obtain a waiver the fee will hurt small businesses in the community. In addition, because many MPA members are small to medium businesses MPA wanted to help recruit viable businesses to the area. They were concerned and unclear regarding the schedule of fees. In looking at the table, it seemed that there would be some economy of scale that would be reflected in a modified fee schedule. They were also concerned about how the fees would impact business owners wishing to relocate to the area, particularly to the city's HUD empowerment zones.

Joy Herr Cardillo, an attorney with the Arizona Center for Law in the Public Interest, said she was present to support the system equity fee proposal as an important first step for the community to finally get growth to pay its own way. That is a refrain that the council had heard a lot from her in her capacity at the center. The center has been pushing for some sort of impact fee for the community for some time. However, she wanted to emphasize that the system equity fee is a first step and not the only step that needs to be taken by the community. She thought it was perfectly legitimate that as existing water ratepayers had invested in the infrastructure that allows new users to hook up to it, they be asked to pay their share. She thought it was important to recognize that to the extent those additional users have forward-looking impacts on the system, the city needed to recapture those costs as well.

In response to the argument that this was a threat to affordable housing in the community, it is important to keep some facts in mind. The first being that it was

important to recognize that in the year 2000 only 6.6% of new housing was within a price range that was deemed affordable. That was a very small percentage of new housing. It was also important to recognize that resales of existing housing outnumber sales of new houses by three to one, so again, a big portion, 75%, of the housing market is not even going to be impacted by the proposed hookup fees. She also thought it was important to recognize that Tucson had changed and the housing market had changed and when looking at the top ten builders in the community, which represent over half of the new houses built, seven out of ten of them were from out of state. The argument has always been that if the fees go up, the price of the house is going to go up. She has never taken Economics 101 because she was a lawyer and was not good with numbers, but she did know that the price of housing is determined by what the market will bear. U.S. Homes, the number one builder in Tucson, showed in their annual statement for 2001 a profit margin of 26%. Their chief executive officer was paid \$6.5 million. There was some room there for them to absorb the fees. The CEO of number two builder, KB Homes in Southern California, was paid \$40 million. She reiterated that there was some room there. While she appreciated the importance of housing affordability and the need for the community to address it, the way to do that was not to continue subsidizing new development.

Dr. James Riley, chair of the Citizens Water Advisory Committee, said the mayor and council, and the city manager, appoint the CWAC members. The membership is composed of citizens with an interest in water issues and fiscal responsibility. Members are from the Tucson Water service area, both inside and outside the city limits. The CWAC finance subcommittee, chaired by Mr. Chuck Freitas, reviews financial matters in depth. The finance subcommittee studied the system equity fee approach in detail over the last year. Their advice was reviewed by CWAC as part of its responsibility to make annual recommendations to the mayor and council on water rate adjustments. CWAC studied the methodology for calculating the proposed system equity fee and found that it was fair to current and future customers.

Tucson Water provides service to nearly 700,000 residents, both inside and outside the city limits. The Tucson Water customers have financed via water rates a system that is prepared to provide water service to additional customers. The system's equity fee revenues would be used to recover costs incurred to finance the existing water system, thereby benefiting current and future water customers through reduced future water rate increases. As the council knew, the estimated future annual rate increase without the system equity fee, averaged about three percent. With the system equity fee, it is anticipated that there would not be a need for any rate increase in the next fiscal year and only two percent per year every other year after that over the next five years. Water utilities throughout the state of Arizona and across the nation have turned to development fees like the proposed system equity fee as a capital-financing source. These fees are intended to equitably distribute infrastructure costs between new and current customers. CWAC found the proposed system equity fee to be a fair way for Tucson Water to recover growth related capital costs. Therefore, CWAC urged the mayor and council to implement the proposed system equity fee.

Bob Richardson, said he served on the citizens water rate advisory committee, which the council created a few years ago, made up of representatives of the various classes of service for Tucson Water. He was invited to participate and he thought the members were extremely well educated by Tucson Water

staff on the complexities of a very large organization that serves a great number of people and provides very good service. Staff provided very good education on the cost of service issues and on the financial issues and they went through one cycle where the rate advisory group recommended to CWAC a 4.3 annual increase. Late last year, staff asked for the committee's input on the proposed system equity fee. They gave the members a great deal of research and information from the consultants hired by Tucson Water. The members asked staff a lot of questions, talked about low income, about growth and many other issues that had to do with what the equity fee would do. The committee decided that it was the right thing to do, but they especially liked the fact that it would lower the fee increases that were currently projected out over a number of years and during some years meant that there would be no fee increase at all. The committee thought that was the best impact for the people who use Tucson water in that those fees that normally would be increased would not be increased. He urged the council to support the proposal.

Don Chatfield, executive director of the Primavera Foundation, said Primavera does a number of things. They work alongside the people living on the street, helping them begin a new start in life, they help provide affordable rental housing, they operate a couple of job training programs and one of those helps train the homeless in the construction trades. This year Primavera has in place contracts to produce 32 housing units. They work alongside a number of other fine nonprofit agencies in Tucson, including Habitat for Humanity, Chicanos Por La Causa, Tucson Metropolitan Ministries, Tucson Urban League, and others. He wanted to share some of the impact the proposed system fee could have on the clients they serve. He noted that the request to speak form that he filled out had a place for people to indicate if they supported or opposed the proposal. That was difficult because he was present to ask the council to consider tweaking the fee a little bit and consider adjusting its administration. Primavera operates a home ownership program serving first time low income homebuyers. The clients go through a comprehensive education class to learn how to repair their credit, how to budget, take care of a house and what all of those papers they sign when they go to close mean. Not too long ago a young family came to them and went into the qualification process. They came up with numbers that showed they could afford a house that Primavera was rehabilitating, then they realized that there was a homeowners association that was going to cost the buyers ten dollars a month. That meant that they no longer could qualify for that house. He said ten dollars a month makes that much of a difference.

Not too long ago, Mr. Chatfield said he checked out the Tucson Water web site with information about the proposed fee. It was calculated on the web site and if that \$1,400 fee was financed under the cost of the home, and within Primavera's program it would have to be, it would be a difference of nine dollars a month. That makes a real difference. He had hoped to bring some of the families served by Primavera to this meeting, but was unable to, so he would tell the council just a little bit about the people that Primavera had sold houses to over the past few years. One was a young family, two members, hearing impaired, who came through Primavera's Las Casitas Program. They saved for two years, worked to repair their credit, and were able to qualify and move into their first home. Then there was the elderly couple who at 65 and 63 were able to buy their very first home. These people were not moving from Rancho Cucamonga or Poughkeepsie, New York. They are Tucsonans; native Tucsonans who have lived in substandard rental housing and their dream was to be able to afford their very first home.

His appeal to the council was that even if only 6.6% of Tucson's housing sales are affordable, and he agreed that that is pathetic and needs to be increased, the people who buy them should not be penalized. Those people who have already suffered so much and were trying to get into housing should not be asked to bear the full weight of the proposed fee. He looked for other systems that have a graduated fee, he understood the problem with the waivers, and he thought Tucson Water had already put in the makings of a sliding scale, based on meter size. He urged the council and staff to consider a sliding fee that takes into account the number of fixtures in the home and, if at all possible, the selling price of the home. He was present to appeal for those first time homebuyers; people who already live in Tucson and often do not have a voice, that it would not be equitable to expect them to bear the proposed fee.

Mayor Walkup asked if anyone else wished to address the council.

Robert Reus, said he supported the proposed equity fee because either the senior citizens, the people on fixed incomes, were going to pay for the constant, never ending, expansion of the city or the people who were buying the homes were going to pay for it. He thought the people who bought the homes should be the ones to pay for it. The majority of the people moving into the city have jobs lined up and if a person is in the market for a new home, has a job to pay for it, and was moving into Tucson for the first time they should pay the fee for expanding the services. If they could not afford it, they could buy an existing home like he did. He bought a 40-year-old home because that was what he could afford and he resented that he was constantly, as he was in the city he previously lived in until impact fees were implemented last year, being asked to pay for new development on the edges of the city. He might be in a position to do that or he might not be, but there are a lot of poor people in the city who were not able to pay for new development. There are working poor and a lot of seniors on fixed incomes where every dollar in their budget counts. He did not think they should have to pay for the never-ending expansion of city services out into the desert.

He thanked the mayor for indulging the people who spoke about the war although it was not on the agenda. He said he had been hard on the mayor in the past two years and it was appropriate to thank him when he was being patient as well as criticize him when he was not.

Mayor Walkup asked if anyone else wished to comment.

John Kromko, said he was all choked up because at one meeting he was able to agree with something the council was doing. He realized he would no longer be able to say that Tucson is the only major city in Arizona without an impact fee. He used to like to say that and he would not be able to anymore. The subject proposal was a good first step and he hoped the council realized there was much more to be done in this area. He agreed with the representative from Diamond Ventures and he did not know if that had ever happened either. He said it would be tragic if the fee was used to sell bonds. He did not know if Mr. Modeer was thinking about doing that, but he knew he thought that way now and then and that would be tragic. The proposed fee should go for impact and not for bonds to build more stuff. Years ago the university sold tuition bonds and now they are in so far over their head they would never get out. They had to institute a \$1,000 tuition fee and would have to do so again next year because they sold way too many bonds. He hoped the city would not do anything like that.

Bill DuPont, said the reason he came to this meeting was to sit and listen, but he had to speak. His neighborhood association, Colonia Solana, supports the proposed system fee, as did the Central Citizen Leadership Network from ward six, which he chairs. The one thing that he wanted to bring up that affected his neighborhood was that they had discussed water issues and they worked hard to get gray water in their neighborhood in 1988. With the onset of the new fee impact this past year what they had seen was an abundance of private wells throughout the city. That did need to be offset because it was more economical for those people to build wells than to pay the water fees. As a community person he did not support private wells and said the city also needed to look at gray water structures.

Mayor Walkup asked if anyone else wished to address the council.

Richard Cook, said he agreed with the proposed system impact fees.

Chris Ames (ph), said when the Iraq War began, the term Jihad, which in Arabic means "Holy War", was used and people should not be hasty and forget what is fueling the fire. It proved God is mightier. Whether it was Allah, Buddha, Muhammad, or even Christ, man feels the need to justify his God through the prospects of war and death, which he thought was a weak way for man to show his power. The United States is guilty of another God. This God that is given by Venus, the bright and moving star, is called Lucifer and understanding how government is flawed, people must return to their thoughts the man that began it all, who was Adam Rostop (ph). Mr. Ames said in the year 1776, Mr. Rostop started his own organization under the name of Illuminati. The date that started that was May 1, 1776. A few of Rostop's followers were Benjamin Franklin, John Adams, Thomas Jefferson, also identified as the forefathers of the country. In order for Rostop's organization to be identified it had to have an insignia. The crest of the Illuminati is the six point star and in the three dimensional form United States Great Seal. If people have done their research, they would know the six point star is also the mark of the beast.

In further note, the star is the oldest flag in history, which is the Israeli flag. When the true and present fact of the Great Seal is on every dollar bill people must look at what it consists of and according to Allister Priory (ph) this triangle inside the circle is the symbol of Satanism. He said George Bush, his father, and his grandfather are members of a branch of the Illuminati. In order for a person to join the Illuminati or any of its branches they must first give their oath to Lucifer. The triangle is the total destruction of Christianity, which is the number five item on the Illuminati scale. It is said to be the all seeing eye, but in fact it is the all spying eye. The Insinuating Brotherhood is the organization that was set up to guard this order. At the bottom of the triangle was the MDCCLXXVI. In Arabic numerals that is 666. It has been assumed that that was the date the Declaration of Independence was signed, however, that is not the case. Along with the seal there is a new social order. The first interpretation was in 1933, which was brought about by the order of the New Deal and for those who did not know, he said that was brought about by President Roosevelt. These facts should tell the American people of a conspiracy. The government is a government of traitors. The great seal should be a wake up call since it has a six-point star. The Israeli flag supports the very same symbol, which is the symbol of Satanism. The people should take a step back and think about what it is they defended themselves with and why. These facts are enough to show why America supports the Israelis and does what it does for them.

Another small reminder is a definition brought by *Webster's Dictionary*, which defines democracy as a government in which a supreme power is invested in the people and exercise directly through a system of representation, representatives usually involving periodically held elections. However, it gives another example of pure democracy in that the people exercise power rather than through representatives, which is a total contradiction of the two. When it comes to democracy, he could see no reason for two different meanings.

Mayor Walkup asked if anyone else wished to speak on the water system issue. He said the council had been patient in listening to people speak on issues other than water.

Jonathan Salvatierra, said he serves on the citizens advisory board for the San Antonio neighborhood and the Arroyo Reclamation Project. He wanted to identify that other things create a cost factor when looking at water issues, which was the pollution of that water. There have been a number of instances in the city, at least six to eight TCE contamination sites, which the city is working on. Tucson Wastewater is doing a repair on one with Mission Linen, but what he wanted to address was the fact that there was no factor for polluters to offset the increased cost of these fees that are the burden of the taxpayer. The problem was that it was no secret. There were a number of very serious pollution problems in the city of Tucson. There are wells along the Barraza Corridor that were shut down and Mat Doolen (ph) would probably be able to address that further in some sort of RFP as to some kind of impact and the costs that it had burdened the city with. Dave Modeer was having to look into the future to create new sources of water. All of these things have been accelerated and are being paid for with taxpayers' dollars and it was not fair. Equity is something that everyone has talked about and it was important that the city have some kind of representation for the taxes that people pay and this was another part of that equity. He had seen the efforts the city had made to identify the water department, identify the Arizona Department of Environmental Quality, doing their work to address serious issues that created a hazard to the city's precious water. During this time the issues of pollutants need to be addressed and solutions need to be created, even going to the point of letting the legislature know that the city needs the funds to maintain the remediation efforts that had been outlined by ADEQ over the last few years. The budgeting had been totally different and the city was going through a number of changes that address those issues. However, it was only through this kind of representation that the city gets a view of the severity of some of it without just addressing costs that are paid by each individual taxpayer without addressing some of the real core things that are real rationales for why the city cannot pump water in its main basin areas. It was sad. The city has the technology and if these kinds of things are encouraged, the people who were creating pollution problems could be leaders in the community to respond to this demand. It is with the furtherance of the council that those kinds of things could be addressed, initially in the form of some fundamental way to create a guideline for them to contribute in some equity to the whole solution. He thought that was very important.

Mayor Walkup asked if anyone else wished to comment. There was no one.

It was moved by Council Member West, seconded by Council Member Dunbar, and carried unanimously by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup said the consideration of the adoption of the ordinance establishing the water system equity fee is scheduled for the council's meeting of April 7, 2003. He asked if the council had any questions.

Council Member Leal said it was clear that a number of people thought the proposed system equity fee was the right thing to do. Some of the council members have argued for some time against having subsidies built into volume charges, as they were for some time on water meters. Tucsonans were subsidizing water meters at about \$1.5 million a year in volume charges so that developers did not have to pay. Some of the council members thought that was wrong and eliminated that. In a similar vein, they had made an argument that capacity had been paid for in the same way and they ought to figure out a way of getting at that. A couple of the speakers at this hearing argued the same thing and were grateful that the city was headed in this direction and that the city was working toward equity and proportionality. A couple of the speakers said some things that made him want to ask questions that staff could address at the April 7 meeting. The city was taking into consideration prior investments made by developers, so staff did include those costs when they factored in what amount of money was still left to be recouped, so the community does want new housing and new meters to pay for this.

However, if the woman who lived on 4th Avenue for 30 years through her volume charges paid into the city for creating capacity, but then she and her family moved six blocks to a new house they had built, the city's fee structure would not take any of that into consideration and she would be asked to pay a second time. He wanted to make sure that in talking about equity they were not just talking about evenness, but really were able to take into consideration that kind of equity. He wanted to do a system like the one proposed, but at the same time, he did not want to charge that woman twice. He was talking about proportionality. So far, the water fees were set up to treat the two bedroom house the same as the five bedroom house, but probably really different water bills would be coming out of those houses in terms of volumes used. Volume to him meant capacity and so if they wanted to think hard about proportionality there would probably be some way to treat two bedroom, four bedroom and five bedroom houses differently. They would be broken out a little bit. He knew that might make it more complicated for staff, but it also might be fair in terms of proportionality to the community.

Council Member Leal said another thing that was worth mentioning had to do with the issue of affordable housing. People from Primavera and Habitat, said that yes, while 6.9% seemed small, percents should never be confused with human beings because evil dark things happen. He said they were talking about 350 families and it was not enough in terms of affordable housing that of the 3,000 or 4,000 permits that are issued to build new houses, only 350 were affordable. In fairness, the impact fee needed to be added to the county's wastewater fee and the city's developmental services' fees to see what the impact was going to be. That may add up to \$10,000 to \$15,000 per house and every \$1,000 that is added to the cost of a house takes 700 families out of the market because they would no longer qualify for a loan. If that was true for \$1,000 imagine what happens with \$10,000 or \$15,000. The question of waivers had come up and he did not think the council should be expediting in patting themselves on the back for solving some greater good issue while at the same time creating a system that is punitive and harsh to the poorer families in the community. He thought it was incumbent upon the council to go the last bit and make it a win/win situation. He thought they had to figure out how to do some kind of sliding scale. A legal capacity might come about by that part of town that was in

the federal empowerment zone. That was not the only way, but if that was a way for the city to do waivers, and he did not mean by having the general fund pay the water department back, he did not want to let staff off that easy, he wanted to know. The law requires the general fund to pay the water department back, but if that empowerment zone allows the department to deal with it internally, he wanted to know. If it did, he thought the city should ask the county to do the same with sewer hookup fees. If they could do those sorts of things, they would create a win/win situation. They would protect affordable housing, they would protect the ratepayers from subsidizing sprawl by having an equity fee, and they would have an equity fee that really works from top to bottom. He said those were his comments from listening to the speakers at the public hearing and hopefully staff could expand and answer some of those issues at the April 7 meeting.

Mayor Walkup asked if there was any other discussion.

Council Member Dunbar asked if the item was being brought back in study session on April 7 because she agreed with Council Member Leal, and did not see the proposal as being equitable. It was anti-equity, especially considering how it would affect affordable housing in the community. She wanted to know what the process was going to be, if in fact staff was going to issue memorandums or what.

James Keene, city manager, said that was really the council's pleasure. His thought was to proceed with bringing the ordinance back for adoption on the 7th in regular session, but it was certainly possible to have a study session prior to the council taking action. He said Mr. Modeer had just informed him that if the decision is delayed it would run into the schedule for rate setting for next year, meaning staff would be in the position of having to look at a rate increase for water customers. It sounded like the council probably wanted to be able to discuss the issue in study session before considering it at the regular session.

Council Member Dunbar said she hoped staff would take some of the comments from the speakers at the public hearing into consideration.

Mayor Walkup said there had been some pretty good suggestions. He asked if there were additional comments.

Vice Mayor Scott asked if the system equity fee was going to benefit future development. Was that clearly the drift or was it, as Mr. Modeer said, primarily and wholly to repay debt service?

Mr. Modeer said the equity fee as currently developed relates to the cost of infrastructure that had already been built into the system to provide for the capacity for growth beyond the existing system. When he referenced debt service, he said the construction of those items that were built into the system are primarily financed through the city's revenue bonding capacity. Therefore, the revenues generated by the system equity fee would be used to pay down those debt equities that exist related to that amount of the system that was built to provide that excess capacity. Other facilities were built within the system yearly that are capital items, but they were not part of providing capacity for new customers. Those were not being funded by the proposed equity fee. It was only the items that were listed in great detail in the study and in the memorandums that were produced showing that all of those facilities have been subtracted out of the

calculation for the amount of capital that was invested in the system to provide additional capacity to serve 40,000 or 50,000 additional connections onto the system. It is backward looking and dealt with only those. It did not deal with any forward-looking capacity that may be needed in the system beyond the capacity that currently exists.

Vice Mayor Scott asked if there was any sense that in some areas there may be undercharges and in other areas there may be overcharges. That it may not be an equitable fee all the way across. That was a question that was raised in a document she had, in which the writer stated a concern that averaging the water fee across Tucson's entire incorporated area would result in inequities.

Mr. Modeer said that was a difficult question to answer and he would try to do so in two ways. The amount of capital that is invested in the system to provide capacity are normally large investments that do not relate to a specific area in the system. It may be large reservoirs someplace, such as the Clearwell Reservoir, it may be utilization of Central Arizona Project Water in the Clearwater facility. There may be a number of things that are not area specific, so in most respects the investment in providing for the capacity in the system is not necessarily easily segregated by different areas of the city. The answer to the question of whether or not it costs more to serve different areas of the community is a given, it does. However, the mayor and council over the years had moved away from trying to go to different fees in different areas of the city due to the cost and difficulty in maintaining the system, and the appearance of inequities, customers in certain areas paying more than others because of a variety of different reasons. The water utility has gone more to the same fee for everyone for the amount of water that is used. That has been the choice of the mayor and council since the 1970s.

Vice Mayor Scott said a lot of had been said about incorporating this with the Growing Smarter legislation and asked if anything in the state law severely inhibited implementation of incentives, sliding scale and that sort of thing.

Michael House, city attorney, said yes, there were some limitations in the state law that the city would have to work with. There was a requirement in the state statute that gives cities the authority to adopt impact fees that the fees must be assessed in a non-discriminatory fashion. That was something staff had to keep in mind as they determined whether there could be fees based upon criteria other than usage of the water system, which was the basis of the proposed fee. In general, the fees can only be based on that factor, not on other factors, but that was something staff would have to take a look at.

Vice Mayor Scott said the user connection fee was an impact fee with a different name. In other words, did it have to be specific to be totally legal when referring to legislative matter to be called an impact fee, or could it be other terminology and be considered in the same category?

Mr. Modeer said it was his understanding that impact fees are forward looking costs. In other words, if there was going to be new growth in an area, if one of the roads was needed to serve one of the schools, libraries, et cetera. The proposed fee is not forward-looking. It looks at what has already been built into the system that every ratepayer has been and will be subsidizing up to the time of the adoption of the proposed system equity fees ordinance, if it is adopted, even though they derive no benefit from that. The proposed fee is called an equity fee because it would take those costs that have

been subsidized by the general rate payer for a capacity that they derive no benefit from and put them onto future residents who build new homes or small businesses. The proposed fee removes the subsidy from the current ratepayer and puts the cost where the benefit is actually being derived.

Vice Mayor Scott asked if someone had been in Tucson since the very beginning, since the city's first water infrastructure was built, was staff going back that far in terms of being able to recapture those investments. How far back would the proposed fees reach?

Mr. Modeer said it would go back to all of the city's investment that had not been fully depreciated. Going back in time, he said a lot of investment in the utility had been fully depreciated and there was no longer any costs on the books that the city would be deriving fees from its customers to pay for. So, there was a point in time when investments go off the books when they have reached the end of their useful life.

Vice Mayor Scott said, as a matter of interest from a historical perspective, there must be something that the council could use as a gauge. She asked at what point in the boundary lines in the city limits does staff start talking about some of those investments that are no longer on the books, but there are other investments that are and those are the ones that were being addressed through the proposed fee. She thought that might be interesting for the council to know.

Mr. Modeer said if he understood the question it went to what amount of the facilities that are serving people inside the city and outside the city are fully depreciated and what amount are not fully depreciated.

Vice Mayor Scott said she had to assume that at one point the city of Tucson was of a certain dimension. It had expanded in its dimension and Mr. Modeer said that some of those infrastructure pieces had been put off the books by depreciation. There are those that remain that had not been fully depreciated and they represent a certain part of the system. Does staff go to the heart of the system and work out, or where are those depreciated pieces versus those that have yet to be depreciated and what year does that fall into?

Mr. Modeer said it was understandable that the oldest facilities are normally the pipelines in the water system. They are the ones with the longest life cycle, anywhere from 50 to 100 years depending upon the material that is utilized. If there are still pipelines within the older part of the city that are original or have been in for a long period of time, they may be fully depreciated. However, as he said, pipelines, depending on the material, be it cast iron or plastic, or whatever, have different life cycles. A cast iron pipeline could last 100 years. There are a number of regulatory bodies that provide the depreciation life on every piece of equipment that is invested in the utility, so that is easily determinable, what still has a useful life span. Staff does that every year by updating the physical inventory. They know exactly how much is still on the books that is used and useful and what is not. He said it can get very complicated because it involves a depreciation analysis.

Vice Mayor Scott said that was what she was going for.

Mr. Keene said despite the definitions, in responding to the questions about fee waivers and affordability he thought the city attorney was erring on the side of caution as staff looked at the issue and brought the response back just for the kinds of reasons that

the council was asking detailed questions. He referred back to the discussion earlier in the day about impact fees and why the city does not have a \$1,500 impact fee right away. This discussion was before the council as a result of a year's worth of work and as was mentioned, the five pound book developed in detail and methodology, yet there are a lot of questions and concerns. The need for thoroughness is being reflected he thought in the nature of the questions and concerns the council was raising and staff just needed to keep that in mind. He thought he and the city attorney would work on answering the questions the council had and with its permission try to think outside the box to see if there were any other alternatives on the waiver or affordability issue.

13. PUBLIC HEARING: (SE-02-27) COPELAND – PIMA STREET, C-1 ZONING SPECIAL EXCEPTION – APPEAL OF ZONING EXAMINER'S DECISION

Mayor Walkup announced that city manager's communication number 162, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on an appeal of the decision of the zoning examiner in a special exception land use case. The applicant is Tim Rout on behalf of Jean Marie Copeland, the property owner. He asked the city clerk to read the order of the appeal.

Kathleen S. Detrick, city clerk, said the city attorney would first summarize the procedural questions presented in this case.

Michael House, city attorney, said this was an appeal of the zoning examiner's denial of a proposed special exception land use. The applicant proposes a self-service car wash as a special exception use. The proposed development must comply with the *Land Use Code* criteria and the applicable neighborhood plan. In this case the principle issue is whether the proposed use can be developed in a manner that would conform to the provisions of the *Grant/Alvernon Neighborhood Plan* that new developments should protect and enhance the integrity of established neighborhoods. As an appeal of an administrative decision the mayor and council act in a quasi-judicial role and the decision shall be based solely on the material presented at the public hearing before the mayor and council. The mayor and council may consider the decision of the zoning examiner, the records of the proceedings before the zoning examiner, the testimony and evidence presented to the mayor and council at the public hearing on the appeal, and the communication and materials provided by the city manager in reaching their decision. The mayor and council decision shall be consistent with the overall purpose and intent of the *Land Use Code*, the *General Plan* and any applicable area or neighborhood plans. The mayor and council may affirm the denial of the special exception or may reverse that decision to approve the special exception and approval may be with or without conditions as determined by the mayor and council.

Ms. Detrick continued that the zoning examiner would present a report and summary of the case.

Peter Gavin, zoning examiner, stated that this item was an appeal of his denial of a special exception land use request for a self-service car wash on the south side of Pima Street, approximately 100 feet east of Alvernon Way. The proposed self service car wash would be open 24 hours a day, seven days a week, and would have access on Pima Street, which is a collector street per the *Major Streets and Routes Plan*. On

December 19, 2002 he held a public hearing on this request and besides the applicant and city staff, six other people testified at the public hearing. All six spoke in opposition to the self-service car wash. Land use policy direction for this request is provided by the *Grant/Alvernon Area Plan*. The plan promotes the protection and preservation of the integrity of established neighborhoods. The plan also specifically states that uses operating earlier than 7:00 a.m., and/or later than 9:00 p.m. should be considered only on arterial streets. On December 27, 2002, he denied the request based on the following three findings of fact: 1) The submitted preliminary development plan was incomplete. Approximately one-third of the subject site has been left vacant by the applicant. 2) A self-service car wash by nature is generally unattended and open 24 hours a day, seven days a week. Such a use can have late night and early morning activities that disturb existing neighborhoods. 3) The *Grant/Alvernon Area Plan* supports uses that operate before 7:00 a.m. and after 9:00 p.m. only on arterial streets. In conclusion, Mr. Gavin said Pima Street is not an arterial street and therefore the proposed use is not in compliance with the *Grant/Alvernon Area Plan*.

Ms. Detrick announced that the order of the appeal would first be the appellant, Tim Rout on behalf of the property owner, Jean Marie Copeland. Second would be any response from city staff. Third, would be a representative of the affected neighborhood who would speak in support of the zoning examiner's decision. The time limit for argument was ten minutes for each side. The parties could use that ten minutes either in direct address to the council or in rebuttal and could divide the time any way they chose, however, the limit was ten minutes. After the presentations by the property owner's representative and the neighborhood representative, the council would go into the public hearing portion of the appeal, after which the mayor and council could permit any rebuttal as appropriate. After the public hearing the mayor and council could direct questions to any of the parties who appeared before them or other persons who might have relevant information in order to establish the reasons for their decision. The mayor and council could then discuss the case and act upon it. She reiterated that the first speaker would be Tim Rout on behalf of the property owner, Jean Marie Copeland and Mr. Rout would have ten minutes for his presentation.

Tim Rout, represented the proposal to build a self-service car wash at Alvernon and Pima Street, and using a powerpoint presentation showed the site, which had no landscaping and said it was an unappealing area. He showed the proposed improvement, a six bay self-service car wash with all of the appropriate landscaping, paving, and what they felt is an attractive construction design, adobe colored. He showed another view of the proposed improvement and said their appeal was based on several factors, the main one being the *Grant/Alvernon Area Plan*, Policy 5, which Mr. Gavin spoke about. The development services division analyzed this case and agreed that within the *Land Use Code* it was in compliance. According to the *Grant Alvernon Area Plan*, it complied with the land use policy direction of that plan with conditions to mitigate any noise concerns the neighbors might have had. Mr. Rout said they agreed with all of the development services conditions and a review of the transcript of the last hearing would show that. He disagreed that the preliminary development plan was incomplete. They agreed in the end to everything the development services staff asked them to do to mitigate any noise damage. That included landscaping one third of the lot, setting aside one third of their 37,000-square foot lot for nonconstruction and nonpaving in order to eliminate noise, so they obviously disagreed with that portion of it. In addition, Mr. Gavin referred to the fact that they were not on an arterial street. In fact, they are 90 feet from

Alvernon and the property is surrounded by commercial properties on all sides. He asked that the council look at the general spirit of the *Grant/Alvernon Area Plan* and the *Land Use Code*, and the fact that the experts in development services agreed that they were in compliance and that the project would not be a detriment to the neighborhood.

Mr. Rout said the cornerstone of effective law in his experience had been transparency. This is the first time he started a business, the first time he had gone through this process for zoning and he has been frustrated by the fact that the subject project meets all of the conditions of the *Land Use Code* and the *Grant/Alvernon Area Plan*, that he had agreed to whatever code staff had put to him, yet the project could still be denied. He said his next slide showed the neighborhood support within the 300-foot radius, which development services staff agreed is an important area for obtaining approval, the people who would be most affected by the proposed development. It showed the people who actively support the project, the people who had no objection, and the protests. It showed that there was overwhelming support in the area. Out of 64 lots, 62 either approved or had no opinion. In addition, the project had unanimous support from all local businesses. They went through and talked to all of the business owners and they all agreed that the project would be a great boon to the local economy of that corner of the area, bringing more people in or just increasing the livelihood of the area. There had been some problems attracting customers to that corner.

Mr. Rout noted that the major opposition to the proposed project was from the neighborhood association, so it was necessary for him to address that. He attended the neighborhood meeting, which was attended by 25 people, none of whom live within 300 feet, therefore, they would not be those most affected by the development. Brad Holland was elected at that meeting and his constituency is at 25. Mr. Rout pointed out that there are 22,000 residents of midtown, which he did not believe gave Mr. Holland a democratic mandate to negotiate on this issue. Five or six of those people are on an activist task force and none of those people live within 300 feet. Some of the quotes from the meetings of those activists included, "People shouldn't be allowed to wash their cars in the desert," "I can hear cars two miles away," "We try very hard not to have street lights in the area," "The existing lot looks really clean to me. I would rather have an empty lot." His favorite quote was, "It's a haven for sex offenders." Mr. Rout said his project has been accused of just about everything, the opponents were using the shotgun approach, and it was hard to hit a moving target. It had also been portrayed in the neighborhood on petitions and everything else that the project was a rezoning, which as everyone knows is a kind of code word for deny.

Mr. Rout said there had been no good faith negotiation by Mr. Holland. They tried from the beginning to act in good faith, gave Mr. Holland concessions on virtually all issues in the design and development of the project, but attempts at reaching any kind of agreement were sabotaged. What he really wanted, what the neighborhood really wanted, was for the existing 2,000-square foot office building to be renovated despite the fact that the market value of the lot is \$320,000. Mr. Rout did not know anyone who would be willing to spend that kind of money for a 2,000-square foot office building. He said any proposed use would involve the destruction of the existing building. The neighborhood concerns were traffic and as the council could see from his slide, the use that is proposed does not generate more than 530 cars per day, which is .4% of the daily volume. It does not attract people from outside the area, its users would be neighborhood people. The proposed project would not increase traffic. As far as noise, Mr. Rout said no

complaints had been made to the Tucson Police Department regarding noise at car washes, no evidence of problems from existing car wash owners. Design considerations for the project according to the development services staff recommendations he thought were far and above the call of duty in mitigating any possible noise issues related to the car wash.

As far as crime goes, Mr. Rout said the area has a relatively low incident of crimes. The area is well lit and the proposed design permits maximum visibility. There are no perimeter walls or anything like that. He said there were no reported problems from the owner of the 24-hour car wash two miles down on Pima Street and they have talked to him extensively. They have a four-layer process for reducing noise. They have quiet sprayers, vacuum motors with sound equivalent to that of a refrigerator, structural landscaping operations within the concrete bays, one third of the lot is unpaved. Those are all part of the extraordinary means they have gone to minimize noise and are four times the required landscaping and buffering. It is called garden wash because it is more landscaping than actual building. As for the design, the vacuums are located more than 100 feet from residential property and no vehicle use is allowed 100 feet from the property. Brick walls and buildings surround the entire property, 20-foot block buildings on the east and west sides and after negotiations with the neighbors, the developer agreed to an eight foot wall across the south. There are no records of complaints to the Tucson Police Department from other car wash neighbors about noise that he could find.

Mr. Rout noted that the council had seen the condition of the subject lot as it currently exists. The owner proposes ten feet of landscaping at the curb and landscaping throughout the lot with trees, flowers, shrubs, et cetera, putting in a new sidewalk, which that area desperately needs, even though they would be the first developer to do that. Regarding environmental solutions for car washing, he said some people may not know it but to wash a car at home with a garden hose takes 80 to 140 gallons of water, while a self-serve bay at a car wash takes about eight to 12 gallons. That is estimated to be 3,000 cars a month, with a savings of 384 gallons per year and multiplied by the 33 car wash businesses in Tucson. It is a big saving. In addition, soap, wax and other pollutants are captured and cleaned by traps and do not flow into the gutters of the neighborhood. The owner is also looking into plans for recycling, putting the gray water into the landscaping. They propose to implement a charity program where a charity can use the car wash on a certain day and keep 50% of the proceeds. He said that is different than going to a gas station and using a garden hose in that it requires no set up. An example is Wright Elementary School. He talked to the principal about the after school-tutoring program. That particular program could benefit substantially from using the car wash for charity purposes. They would employ people to clean the area. They would have to have someone on it a couple of times a day. Those were some of the benefits as well as the revitalization of existing businesses as he mentioned earlier.

In summary, Mr. Rout said they believed the project would dramatically improve the existing lot. It had great environmental benefits and substantial noise abatement. He thought he had talked about all of those issues. Of the 33 self-serve car wash stations in town, 33 are open 24 hours a day and as far as he has heard there have not been any issues, or if there had been they had been occasional. That issue was far blown out of proportion by the neighbors. He said the project had unanimous and enthusiastic support from businesses and approval from the development experts and neighbors. It complied

with the *Tucson Land Use Code* and the *Grant/Alvernon Area Plan*, per the development services division. He reiterated that they had overwhelming support from the neighbors.

Ms. Detrick announced that the next speaker would be Brad Holland on behalf of an affected neighborhood and he was speaking in support of the zoning examiner's decision. He would be allowed ten minutes for his presentation.

Brad Holland, using a powerpoint presentation, said midtown, the garden district, is a one square mile neighborhood surrounded by Grant, Swan, Speedway and Alvernon, consisting of 2,400 households centrally located. His presentation showed the neighborhood and John B. Wright School, which is the center of the neighborhood. He said the issues before the council dealt with the very real concerns of residents' safety and the neighborhood's survival. Midtown neighborhood is not about people who do not want development in their backyards. He showed examples of backyards in the neighborhood within a mile of the proposed site and said Midtown has supported more thoughtful land use changes. At 1805 N. Swan Road, they supported a rezoning for the Parent Aid Headquarters. At 1307 N. Alvernon they supported a rezoning for the Assistance League, they supported R-2 to the library at Catalina and Fairmount and at 4460 E. Pima they supported a rezoning for the Vietnamese Cultural Center. They are a stressed neighborhood with three times the municipal ratio of commercial to residential development, with 66% rental properties. The two schools, Wright and Doolen, were both declared under performing by the Arizona Department of Education. He showed the subject lot, pointed out the residential area behind it, and noted that Mr. Rout had said that there were no immediate residential neighbors. He pointed out two undeveloped vacant lots, businesses, and an entirely rental residential development.

The neighborhood's concern is that the subject property is a very narrow and deep lot and the car wash would operate 24 hours a day, seven days a week. The subject lot is the school bus stop for Catalina High School, Doolen Middle School, and Wright Elementary. He showed a graphic from the *Arizona Daily Star*, which listed the number of sex offenders, level three registered sex offenders, in the area by zip code. The area's zip code is 85712, surrounded by 85711, 85713, 85719, and they have 80 plus level three sex offenders who live within two miles of the subject lot. There are ten plus level three sex offenders who live within six blocks of the area. As the council saw in the picture, it is an area that would have large two-story walls. The photo that the council saw was a long narrow lot facing on the street. It is a deep lot, which would require some of the development to be turned at an angle. He said the association's concern was cash, alcohol, and the opportunity. Nearby is a 24-hour check cashing business, three liquor stores, a Circle K and Famous Sam's across the street.

Mr. Holland said the association did make some good faith attempts to negotiate with the developers. He met with them on three different occasions and they were invited to the neighborhood association's meeting. Their concern was whether or not there would be staffing at the car wash 24 hours a day, seven days a week. He said that was really important if the proposed business was going to be open. The association would not oppose the project if there was someone there to keep an eye on things, someone to go out, help the people at the business, and deal with any problems that might come up. In the absence of round the clock attendance the association asked for limited business hours per the *Grant/Alvernon Area Plan*.

He said there were additional negative externalities such as late night noise. He knew that the developers had expressed on a number of occasions that they have the quietest equipment available. Mr. Holland said the association had no problem with that, they were sure the equipment is quiet. However, when the developers were asked if they would limit their hours of operation they said they could not make money if they did not allow people to wash their cars at night in the summertime. The neighborhood said people washing their cars, after bar time, at 2:00 a.m., with their car doors open and stereo's going was one of their major concerns. The residents were not concerned about the noise of the vacuums, they were concerned about the noise of the patrons and if there is no one staffing the business how could the neighborhood have input as to the behaviors that go on. The developer said they could call the police and there had not been any issues with police that they knew of in car wash facilities around town. As the police chief or his staff may say, in Mr. Holland's neighborhood when residents call with noise complaints they do not rate as a priority. The police say they will get to it when they can, they are dealing with other things, which the neighborhood completely understands, but the next day, or hours later perhaps after the entire neighborhood has been awakened at 2:00 a.m., the person washing their car has gone and there is no longer anyone for the police to contact. Then again, as the zoning examiner said, there were some hidden modifications.

When the developer showed up with their plan at the beginning of the proposal there was a large empty space in it. When asked about it, the developer said that was where they were going to put their minimart. A minimart is not allowed by the area plan, nor was it depicted on their plan. That part of the property is shown as being landscaped on the proposed plan. However, Mr. Holland said there was no guarantee that that might not be modified at some point in the future. In short, the neighborhood was asking the council to help them help themselves. They asked that the council help them diminish the dangers, encourage neighborhood friendly designs, support businesses that will serve and employ the neighbors and businesses that maintain reasonable hours of operation. He asked the council to support the zoning examiner's recommendation to deny the special exception request.

Ms. Detrick advised that next would be the public hearing portion of the appeal to allow anyone else in the audience to address the mayor and council on this matter. Speakers would be limited to five-minute presentations. She asked if anyone in the audience wished to speak.

Deborah Waylan (ph), said she thought a 24-hour car wash was inappropriate for the subject location and pointed out that Mr. Rout's presentation showed her house as one of the approvals. She said she did not approve of the proposed project. She was visited over the weekend by someone who wanted her approval for the car wash business and she felt her house was misrepresented in his presentation. She was concerned about noise and lights and felt that the car wash businesses at Pima and Craycroft, and at Grant near Dodge, were adequate. She was also concerned about water usage as well as the other things that were mentioned.

Ms. Detrick asked if anyone else in the audience wished to address the mayor and council on this item.

Cyrus More (ph), assistant to Mr. Rout, said in listening to the comments he wanted to clarify an issue. He said that they had not proposed to put a minimart on the subject lot at any point in the discussions with the neighborhood. He reiterated, and it is in the transcript, that they did specify and clarify at the end of the hearing that they intended to fully adhere to the development services staff recommendation, which was essentially to heavily landscape and block out that one third of the lot itself. He wanted to make sure that was clear.

Ms. Detrick asked if anyone else wished to address the mayor and council on this matter.

Margaret Johnson, about three blocks away from the proposed car wash, said she had lived in the neighborhood for 17 years and has watched it go downhill. She had seen owners move out and more and more renters move in. They needed everything possible to happen in the area to keep owners there. A 24-hour business that is not monitored has real safety issues and does not add to the value of her home or the area where she lives. She hoped the council would uphold the zoning examiner's decision. She felt he really listened to the needs of the neighborhood and dealt with the true nature of the *Grant/Alvernon Area Plan*.

Ms. Detrick asked if anyone else wished to address the mayor and council. Seeing no one, she said the council could pass a motion to close the public hearing.

It was moved by Council Member West, seconded by Council Member Ibarra, and carried unanimously by a voice vote of 7 to 0, to close the public hearing.

Ms. Detrick advised that it was time for the mayor and council to deliberate the issue and make a decision.

Mayor Walkup recognized Council Member Ibarra who said his parents live in the Columbus and Flower/Glenn area, which is more than a mile and a half from the subject property, but it is the same neighborhood association. He asked if it was okay for him to vote on the subject request.

Mr. House advised Council Member Ibarra that those circumstances would not be a conflict of interest.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said he thought all of the council had read the material from the zoning examiner's hearing. He asked Mr. Gavin if given the testimony at this hearing, which Council Member Ronstadt did not regard as being a whole lot different from that given at Mr. Gavin's hearing, would his recommendation be any different.

Mr. Gavin said essentially the testimony that was presented at this hearing was similar to that presented on December 19, 2002. He said no, he had not heard any new testimony that would change his decision at this hearing.

It was moved by Council Member Ronstadt, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0, to uphold the zoning examiner's decision and deny the special exception request.

14. PUBLIC HEARING: TUCSON CODE – AMENDING CHAPTER 20, PARADE AND ASSEMBLY ORDINANCE

Mayor Walkup announced that city manager's communication number 166, dated March 17, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing regarding parades and assemblies on city roadways and other city property. He asked for staff's presentation.

Michael House, city attorney, said the current Tucson parade ordinance had not been significantly amended since its passage in 1953. The disturbances on Fourth Avenue in connection with the 2001 National Collegiate Athletic Association Basketball Tournament pointed out gaps and inadequacies in the city's current ordinances regarding unlawful assemblies and control of city roadways. That led city staff to consider ways to improve and strengthen city authority in that area and to facilitate peaceful assembly while maintaining proper control of city streets. At the same time, the Tucson Police Department also expressed interest to the city attorney's office in putting into ordinance form its administrative procedures for the permitting of parades and special events, as they had previously been developed informally. For these reasons, over the last two years the city attorney's office aided by other city staff, had worked to develop a modern ordinance to regulate parades and assemblies in city roadways or on other city property. In drafting the proposed ordinance, Mr. House said Dennis McLaughlin of his staff first reviewed parade and assembly ordinances from municipalities around the nation and incorporated the most useful concepts and provisions from each. The proposed ordinance also conformed to the most recent court decisions regarding permissible parade and assembly regulations. Once Mr. McLaughlin had a detailed working draft, Mr. House convened an in-house committee of approximately eight city attorneys, his most experienced staff, from both the civil division and the city prosecutor's office, to critique the draft and suggest improvements. They literally went over the ordinance word by word. The ordinance then underwent interdepartmental review, which produced constructive input from the Tucson Police Department, traffic engineering, and other interested city departments.

Upon completing that interdepartmental review, Mr. House said the ordinance was submitted to the city manager's office for his staffs' input. At their suggestion, in February 2003, city staff circulated an ordinance draft for comment from interested outside persons and groups who routinely organized what the ordinance refers to as class one events and who have worked with TPD on these issues in the past. The draft was also provided to Thomas Berning, who works with many of the groups, and to Pam Sutherland, legal director of the Arizona Civil Liberties Union. Mr. House said he received some very constructive comments from both of those individuals and thanked them very much for their assistance in this regard.

Through subsequent meetings and an ongoing exchange of information, the city has considered their ideas and comments and incorporated many from both into the final proposed ordinance. For example, initial discussion clarified provisions regarding what constitutes a class one or two event, such as when events on sidewalks are exempt, what sign supports are permissible, what spectator or participant conduct can be

sanctioned, and who has potential public nuisance liability for events held without or in violation of permits. Subsequently, his office also changed the ordinance in response to specific issues raised by the Arizona Civil Liberties Union's March 7, 2003 letter to the mayor and council. For example, the ordinance specifies that in cases involving spillover into city property the chief of police should first attempt to control disobedience of an order to vacate the roadway or property by making individual arrests of persons who disobey the chief's order. Only if control cannot be established in that manner should the chief order the dispersal of the whole assembly. Also in response to the ACLU's concerns, the city attorney's office eliminated a provision that listed declared local emergencies within the city as a basis for denial of permits because other charter provisions or statutes delineate the city's necessary powers in the context of declared local emergencies.

Mr. House said city staff also communicated with people who hold class two events and with neighborhood associations before this public hearing and notified them of the hearing. Finally, a question and answer document summarizing the ordinance's provisions was developed, which was attached to the council's communication as well as having been posted with the agenda materials at the city's web site and made available at this hearing in hard copy. He asked Mr. McLaughlin to briefly describe how the ordinance is organized.

Dennis McLaughlin, principal assistant city attorney, said he was the main author of the proposed ordinance and to aid people in understanding it he wanted to give a concise outline of what it does. The ordinance regulates the holding of parades and assemblies in city roadways or on other city property in such a manner that they block access or impede the property's use for its intended public purpose. Under the ordinance, the chief of police is given the authority to grant permits for these types of events. Under the proposed ordinance, most parades and assemblies within the city would not need a permit. The ordinance exempts parades and assemblies held on private property; on non-city governmental property, which would include county, school district, state, or federal property; in city parks; or at the Tucson Convention Center under a use permit or short term rental agreement so long as the event's spectators or participants do not spill over onto a city roadway or other city property. The ordinance also exempts parades and assemblies on city sidewalks that conform to traffic signals and laws and allow passage of other pedestrians on the sidewalk. The only parades and assemblies that would require a written permit are those that meet the specific definition of either a class one or class two event. A class one event is defined as any parade or assembly that occurs, one, in a city roadway that is the part of the street intended for use by vehicles, or two, on other city property if it blocks access to the property or to facilities on the property, or otherwise impedes or prevents the property's use for its intended public purpose. Most demonstrations, marches, or rallies, to the extent they require a permit at all would be regulated as class one events. Under the ordinance applications for a class one permit that are made at least 48 hours in advance shall be granted unless the chief of police finds that one of the traffic or public safety related reasons for denial listed in the ordinance, sec. 25-18, exists. However, the ordinance also provides that the chief shall grant class one permits on less than 48 hours notice if the chief also decides, based on consideration of specific event characteristics and public safety criteria listed in the ordinance, that adequate traffic and public safety preparations can be made within the time before the event.

Mr. McLaughlin said although the city could lawfully impose necessary traffic control and police costs on class one permit applicants, the proposed ordinance does not require class one applicants to pay those costs. According to TPD and traffic control, costs could range from a minimum of \$138 to several thousand dollars per class one event depending on the route, duration, and number of participants. Due to heavy traffic and the lack of effective and safe alternate routes for such traffic, the ordinance prohibits class one events during morning or afternoon rush hours, on the roadway of any arterial or collector streets, or on the roadway of any street in the central business district. He said central business district means the area bounded on the north by Sixth Street, on the east by Fourth Avenue, on the south by Cushing Street to Stone Avenue and from Stone Avenue by East 14th Street and on the west by Granada Avenue. Although some outside groups expressed concern about that, the city attorney considers the restriction lawful, while TPD believes it to be necessary to traffic safety and public safety in general.

Mr. McLaughlin said class two events such as the Rodeo Parade or Fourth Avenue Street Fairs are defined so as to include those annual or other regularly scheduled events that require greater advance planning and coordination and more extensive use of public facilities. Application for a class two permit must be made at least 60 and not more than 180 days in advance. Continuing the city's past practice, the ordinance requires class two permit applicants to pay for traffic control, police services, and insurance. That requirement already is familiar to class two applicants whose events require more elaborate public safety and traffic control preparations than class one events. Moreover, class two events are often commercial, allowing permit holders to pass the costs through to participants, visitors, or sponsors. The chief can set additional terms and conditions for class two permit issuance that relate to issues and event characteristics listed in the ordinance. In granting class one or two permits the chief gives priority of time and place to events historically held at that location on a known or calculable day or date, or series of days and/or dates, each year. Otherwise, the application filed first has priority. In granting class one or two permits, the chief cannot consider the events, speech content, or message, or anticipated public reaction to it. If a permit is denied, granted with modifications, or revoked the applicant may seek immediate judicial review of the chief's decision in city court. The ordinance also specifies the chief's powers regarding revocation of permits, regulation of permitted events, and of public conduct during such events, response to events held without or in violation of a permit, including their treatment as a public nuisance and separation of events when the chief determines contact between them represents a potential danger to the freedom of expression of their respective participants or to public safety.

In summary, Mr. McLaughlin said the proposed ordinance is intended to improve and strengthen the city's authority over its roadways and other property, while also facilitating citizens' ability to parade or assemble on city roadways or other property in an orderly and safe manner. It will codify administrative practices already in use for many years, clarify procedures for issuance of permits, and aid the police department in addressing traffic and public safety issues related to these events. It is an enforceable, up-to-date ordinance that addresses the community's needs by ensuring protection of both constitutional rights and public safety.

Mayor Walkup asked if there were any comments from the council.

Council Member Ronstadt noted that Mr. House said organizations and individuals who participate in class one type events had been contacted. He asked him to identify the organizations, how things were communicated and what kind of opportunity they had to comment on the proposed ordinance.

Liana Perez, independent police auditor, said when she got involved in reviewing the proposed ordinance her interest was that the city be inclusive of the groups she had been in contact with since April of 2001. She had a list of groups she had actually been meeting with for various other reasons in an informal capacity, their members and representatives of the police department to assure an open line of communication with some of the events that have been ongoing. She said she did provide the city attorney's office with a list of names of individuals and she contacted a couple of them herself. A few of them are Derechos Hermanos, Ms. Sutherland of the Arizona Civil Liberties Union, Jon Miles, and individuals, some of whom represent various organizations.

Council Member Ronstadt asked when those groups and individuals were contacted and how much opportunity they were given to comment or participate in the creation of the ordinance.

Ms. Perez said the very first meeting that was held with them was on February 13, 2003 and at that meeting the proposed ordinance was provided to them. Since then, she believed Mr. McLaughlin had had contact via e-mail.

Mr. McLaughlin said he had been providing updated drafts to interested parties.

Council Member Ronstadt asked if their comments had been integrated into the final ordinance.

Mr. McLaughlin said some of them had been. Staff felt they could integrate some of the comments and they were in the proposed ordinance. Some comments staff felt could not be integrated, so those comments were not in it.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He had received written requests from people wishing to speak and would call on them first.

Pamela Sutherland, legal director for the Arizona Civil Liberties Union, said as the council is aware, the ACLU is devoted to free speech, including unpopular causes. They believe that the intended public purpose for streets and public parks is to express free speech. She thanked the city attorney, particularly Mr. McLaughlin for including the ACLU in this process. She was first contacted at the beginning of February with the proposed draft of the ordinance and they have actually been working with drafts back and forth with Mr. McLaughlin since then. Many of their problems with the original draft had been corrected and changed. She thought the council had her March 7th letter, which contained some outstanding issues that had not been addressed. She said the city's existing parade ordinance is unconstitutional. It basically gives unfettered discretion to the city engineer, which makes it just patently unconstitutional, so that is as a premise. There needs to be a new parade ordinance and she guessed the procedure to this point has been to work with the police department, which pretty much ignores the ordinance. The police department has been very

supportive and amenable to free speech concerns. Her organization's concern is to create a city ordinance that will last beyond the current police chief, who has been terrific, and visualizes a situation where there might be a police chief who is not as sensitive to free speech issues. That has been the goal of the ACLU. Ms. Sutherland emphasized that the entire process working with the city attorney, city manager, and the police department had been a delight.

However, Ms. Sutherland said, she had been contacted, Tom Berning had been contacted and Maritza Brotze had been contacted, but to her knowledge no other input had been gathered or solicited from other groups. One of her concerns about the proposed ordinance was that it needed to be taken to the people. The activists who will be working with it needed to have an opportunity to see how it feels and how it works. Sitting in the audience, she had actually met some activists whom she had not known before and they had made her aware of some questions they had with the ordinance just in the last day that they had had to look at it. The final draft of the ordinance was made available to her on Thursday, to her knowledge it is not on the city's web site, and it was not attached to the public's copy of the mayor and council agenda. She downloaded it this afternoon. Her first plea to the council was that they continue the proposed ordinance and solicit public opinion on it. There were a number of people still in the audience, but a number of people had left because it was so late. She knew those people would like to comment on the proposed ordinance and they would like to have further opportunity to read it. If the city was looking for something that was going to endure and last she thought it was worth taking the time to look at it. That was her first plea.

Ms. Sutherland said she would address some of the issues in her letter, the first being sidewalks, which are a traditional public forum. The Supreme Court, particularly the Ninth Circuit has consistently held that the traditional public forum not be compromised. The proposed parade ordinance sets out three different levels of protest, the class two, which visualizes the Fourth Avenue Street Fair; a class one protest, which is where the recent protests would fall; and the nonpermitted protests. She was concerned that in the event the country went to war there would be demonstrations on the streets. A way is needed so that people can take to the streets, which is a tradition of the country, and have a chance to speak. Having people stay on sidewalks is quite admirable, but a problem with the proposed ordinance is that it does not allow people to take over the sidewalks completely. Instead, it mandates that other pedestrians be able to pass on the sidewalks. All of the recent protests have been held on one side of the street, and any pedestrian who wanted to pass could simply cross the street and walk on the other side. The proposed ordinance would mandate that if the sidewalk was fully used it would be a class one permit.

Ms. Sutherland noted her time was up and said she would conclude. She said her second concern was the rush hour ban. The ACLU suggested that whether or not class one protests would be allowed during rush hour should not be left to the discretion of the police chief. She said there is clear Ninth Circuit precedent that gives people the right to not only have their message heard, but to have it heard by their intended audience, in this case the people of Tucson. What better way to do that than during rush hour when there is actually a volume of people on the streets? She supported Council Member Leal's proposal that would allow the mayor and council to override the police chief's decision to deny a permit in any capacity. She thought that was important so that politics are involved. Finally, subsection 11, regarding the police chief's discretion, essentially

grants the police chief the discretion to deny a permit based on his or her determination of the number of police that would be required for the event. Her concern was that that falls into the hostile audience case, which courts across the country have uniformly held to be unconstitutional, essentially a back door way to regulate content. If it were an unpopular cause, more police would be needed for protection and therefore the protest would be shut down. The ACLU had grave concerns about that.

She said she had one final point just to emphasize her plea that this issue be discussed at a town hall meeting. One of the activists that she talked to pointed out that section 20-511, section 10, d., says the distribution of any food automatically makes the protest a class two protest. In all of the different protests that Ms. Sutherland has been involved in people have been giving out water, so under the proposed ordinance they would suddenly need a class two permit. She said that is one of things that needed to be looked at more closely to figure out a common sense way to deal with it.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar said she missed Ms. Sutherland's comment about why she thought the proposed ordinance was unconstitutional.

Ms. Sutherland said she had written a two and a half page letter that set out the reasons why the ACLU thinks the ordinance is unconstitutional.

Mayor Walkup called on the next speaker.

Ted J. Cooper, said he had lived in Tucson for 46 1/2 years and he loved it. Two of Tucson's greatest resources are water and people. He thoroughly loved the people and the water. He appreciated the reasoning behind modifying and expanding the parade ordinance. He appreciated that the Fourth Avenue riots inspired the whole mess. He also had reservations about the proposed ordinance, as he did with the trend in the country to curtail First Amendment Free Speech Rights. He was also concerned about categorizing and stereotyping people who dissent as being unpatriotic. He wears a button that says peace is patriotic. He is a patriot; he loves the United States. It was founded by dissidents. He was grateful for the opportunity to speak to this issue and voice his reservations. He had worked with the police department on several parades and commended Lt. Roger Carrillo and Lt. Carla Johnson for the excellent job they do of organizing and directing traffic and pedestrians, and keeping the public safe. He commended the council for considering this issue and prayed that everyone would deeply consider the constitutionality and the heart of the issue, which is free speech in America.

John Kromko, referred to his comments under item 13 and said it was too bad that the good feeling between him and the council could not last. He objected strongly to the proposed ordinance. The council had made a serious mistake in trying to fit the street fair and a peace march into the same statute. He said there was no way that could be done. There was no way on earth that a peace march could give 60 days notice and pay for police. There was no way that could happen. He participated in two large peace marches on February 15 and on January 18. Both of those demonstrations were class two demonstrations. One marched right down the street and the other totally blocked the sidewalk. He reiterated that those were class two demonstrations. It was inconceivable to him that the council would enact a law that would

make people taking part in such a march pay for insurance or police protection. That was part of their right to march and they need to be protected in that right. He said that was a mistake and the ordinance should be rewritten to handle the street fair as a street fair. Mr. Kromko suspected that in 48 hours or so there would be very large peace demonstrations in Tucson and that sidewalks and streets would be blocked. He hoped the council would instruct the police department to respect the rights of those people who have a higher priority than traffic. The people do not want any lead bullets or anyone to be shot and he hoped the police understood that.

Mr. Kromko said the proposed ordinance gave the chief of police way too much power. The chief gets to interpret how many officers, whether the demonstration is class one or class two, all of those things and that is not the job of a police department. It is a principle part of government that the making of the law and its enforcement must be completely separate. When they are joined it results in a different kind of government, the kind Americans fought against in World War II. People do not want that. He said it was not right that the police were even involved in the negotiations of the proposed ordinance. The chief of police needed to be a witness telling the council what he wants just as Mr. Kromko was telling them what he wants and then the council should make the law. That is the way it should be. The police cannot be making the law and enforcing it. He asked the council not to allow that.

Mr. Kromko referred to last May when the city wanted to raise the sales tax \$40 million a year, \$400 million total and all of the council supported it. He was on the other side and it was really rough for him because the council was spending over a million dollars of city money to educate the people to vote for that, so opponents had to raise contributions. The city blocked neighborhoods from sending out any newsletters that talked about the subject. He was invited to speak to a neighborhood and they apologized because their newsletter could only say there would be a speaker, they could not mention his name. He said that was what the city did and it was terrible, but even worse, were the police. Somebody promised that the police would get a pay raise if the tax were approved so they were campaigning vigorously. He would go to a neighborhood meeting and oppose the tax, and then a police officer in uniform would stand up and support the tax. That was a violation of state law, a violation of city ordinance and when he called the attorney general, they said he had to talk to the city attorney. Well, the city attorney works for the council.

Mr. Kromko said he then wrote to the chief of police, who said his complaint was unwarranted. Mr. Kromko and other citizens had to go and debate with the police officers, and then they were standing on a corner, and this was his point, they had signs and things, and on the other corner were the cops. They tried to intimidate the protesters, they sent riot police and gear to the demonstration and the protesters knew the police were violating their civil rights. People went home, they were afraid. The police did not send any riot police to their own demonstrations. Mr. Kromko asked the county to imagine what would happen in the face of all this if he had to go and ask his political competitor if he could have a permit to protest when he is on the other corner demonstrating. Mr. Kromko did not know what was in the council's mind, but they gave the police more power to get involved in political activities. He reiterated that he did not know what they were thinking, but they did that. It would be worse in the future, if the police were taking an active role in politics and the council knew he was telling the truth. The proposed ordinance would mean he would have to ask his political opponent for

permission to protest. He asked if that is what the council really wanted. He asked the council to take the proposed ordinance back to the drawing board, tell the police they cannot sit at the table, that they have to be acting as witnesses. That is what the legislature does when they enact a law concerning police enforcement. The police could be out there and they could say what they wanted, but they could not be sitting at the table. That is an important feature of government.

Mayor Walkup recognized the city attorney.

Mr. House, city attorney, wanted to point out that the type of events Mr. Kromko referred to were actually class one events and would not require the type of notification as class two events.

Jade Stokes, said he had written a speech, but some of the things he had heard made him a little emotional. One of the things the council did not have to imagine was the burning of cars, cars being turned over and businesses being looted and people rioting in the street with the police standing there not knowing what to do. Times have changed but the rules of engagement have not. He is on the police chief's steering committee and he is on the board of directors of 88-Crime, as well as being the president of his neighborhood association. He works out of his neighborhood, he deals with law enforcement issues every day and the Tucson Police Department officers and staff are some of the finest he has ever come across and he has come across a few. He thought the chief was doing a good job of some of the things that he looked at in the ordinance. He polled some of the council members because he wanted to get their opinion. He wanted to be sure that people's rights are protected, that there is a review and an appeals process so that people do have a right to assemble, so that they do have a right to express their views and free speech. However, he did not think the city should hamstring the police department. He would like to see those little details worked out.

He heard the representative of the Arizona Civil Liberties Union say that the police department has been very good in working with them and he thought if the police could continue to do that something that is equitable for everyone could be worked out. He was in favor of the proposed ordinance. He has seen the police department evolve from lethal to nonlethal weaponry to meet the times and he thinks they are trying to do the best they could to deal with citizens. People say they are going to get together and protest, exercise their free speech and then things happen. He did not ever want to see another situation where cars are being overturned and people are being shot at while the police are standing there saying they want to do something, but they have no guidelines. This is something that is very serious and if it is not addressed properly, it will come back to haunt the city. Tucson police department is some of the finest and it is unfortunate that the only time citizens remember how great police officers are is when they are seen running into burning buildings as they were on September 11, 2001, when the police and firefighters were running into buildings and sacrificing their lives. Why does it take something like that for people to remember? They hate them one day, but they do not call a lawyer when someone is breaking into their home, and they don't call the reporters when they are being raped or mugged on the street. They call a police officer and the police come. The police have helped clean up his neighborhood and they come when he calls. He has great esteem for them and he was present to support the police with the proposed ordinance. He just wanted to be sure that people's rights are not violated and that they continue to work with the city and all of the different groups that came to the table to reach something equitable.

Mayor Walkup asked if anyone else wished to address the council.

Richard De Bernardis, director and founder of El Tour De Tucson, said he was coming from a totally different perspective, one on parades. He was notified by Chief Miranda's office last week about the proposed ordinance. At that time, he had no idea of its existence. He came to this meeting just to find what it was about, so he read it thinking that his organization was probably provided for somewhere in it and he wanted to have some input. He said El Tour De Tucson has developed with the city police department and other police agencies onto the greatest bicycling event in the nation. They have been recognized by all of the media for how well their event is organized and that is because of the Tucson Police Department. They take the lead in all of the police agencies in helping coordinate the event. He hoped the proposed ordinance would not change that relationship, but he wanted to be involved just from the standpoint of knowing what it really means and how it affected his event. He said they were not contacted by anyone and he hoped El Tour De Tucson would be considered a major event, whether it is a class one, two, or three, so that its organizers can come and help develop something with the Tucson Police or any other city agency. The tour is a major event and he would appreciate it if their concerns were considered. He asked the council to delay the ordinance so that he could have an opportunity to attend a meeting. It might be that everything is great, but he would at least like to be given an opportunity to participate. He hoped the city would take up a resolution to send to the president about not going into Iraq.

Mayor Walkup asked if anyone else wished to address the council.

Sterling P. Vinson, said he has lived in Tucson for 30 years. He is a Navy veteran, he thought he could say he is a patriot. His family came to Tucson over 300 years ago fleeing repression at the hands of an absolutist king. He teaches at Pima Community College and one of the things he teaches is the history and values and practices of a free society. America's institutions have held up under World War II when it fought two major wars at once, the McCarthy era, and the cold war, when the country felt threatened by attack from both Russia and China. Yet, somehow September 11, 2001 provoked a Chicken Little reaction the likes of which he has never seen. Chicken Little laid two eggs immediately, the USA Patriot Act and the total information awareness program, which he thinks everyone knows poses severe questions about the damage that might be done to American's civil liberties. The U.S. Attorney General John Ashcroft is now drafting something called the domestic security enhancement act, or patriot two, for short, which sets in place all of the machinery of repression that any dictator could desire. Mr. Vinson wanted the city of Tucson to set an example for the nation. He would like to go back to his students after spring break and report that the city of Tucson is courageous enough to trust its citizens and allow them to act as a free people. He supported the position of the Arizona Civil Liberties Union regarding the proposed ordinance.

Mayor Walkup asked if anyone else wished to address the council.

Robert Reus, said he objected to the proposed ordinance because it gave inordinate power to the police chief, whom he does not trust or respect and it is no secret that he has been lobbying for two years for a new police chief. He holds the police chief responsible for the riots on Fourth Avenue, for all of the financial

losses to the city for that riot, and for the 40 people who were shot. Mr. Reus holds the police chief responsible for the disrespectful attitude that he gets from the police on the streets. He is organizing a political revolution in Tucson and part of the plan is to give the mayor the authority to replace the police chief subject to the lack of disapproval of the council. He is going out on the streets pushing that. He may be holding a press conference to announce petition gathering outside city hall, and the police chief, whom he is opposing and has definitely no support for, will have the power to disrupt the protests, the press conferences, the public meetings and everything else that goes into it. That is wrong. The police chief should not have that kind of power over the citizens' political protests. Neither the current police chief nor any other should have that kind of power. He did not see the equity if he was going to organize a petition for a new city government in going out and trying to rally the people behind it if he has to go to the police chief, whom he opposes 100% because of the way he runs the department. He said he supports every police officer in the city, but leadership comes from the top. The proposed ordinance gives the police chief the authority to break up protests or deny permits and that is wrong and just another issue to be added to the list, if the council approves it, that he will be campaigning on for a new city government.

Mayor Walkup asked if anyone else in the audience wished to address the council.

Bill DuPont, said in listening to the comments he thought what was throwing a lot of people off was the fact that the proposed ordinance was created so that it covered the street fair and protesting. He thought the street fair should be moved over to such things like events at the DeMeester Theater. There is a big difference between the street fair and a gathering at DeMeester and what the speakers were saying in regards to freedom of speech. He thought the two should be put into different categories and then the ordinance could move forward. He has worked a long time with issues at the DeMeester Theater where there is fund raising and that is what goes on at the Street Fair. He thought the council should look at removing the street fair from the proposed ordinance and handling it some other way.

Angela Sides, said she is a registered voter in ward three and patriotism seemed to be a really strong theme, very popular, so it seemed like a strange time to propose such an unconstitutional ordinance. She wanted to correct the staff member who said the demonstrations he referred to would not have been considered class two events and asked if he had not written the ordinance, which says that because food was served they would have been considered class two events.

Mr. House said he would only respond to questions from mayor and council.

Ms. Sides continued that he was wrong and with all due respect, she demanded some type of town hall meeting on the matter.

Mayor Walkup asked if anyone else wished to address the council.

Richard LaPoint, said he had a problem with the procedural aspects of the proposed ordinance and what happened. The Bill of Rights was not intended to give groups of people rights. The Constitution was not written for groups of people, it was written for individuals. He thought due process and due diligence was not done in contacting the individuals, the citizens and notifying them of this aberration to their civil rights.

Tim Rack Little, said he agreed with Mr. Kromko and Ms. Sutherland that this issue needed to go back to the drawing board and be presented in a public forum. If the council polled the people of Tucson maybe 200,000 of them would not have heard of the proposed ordinance. He thanked Council Member Ibarra for trying to pass a Cities for Peace resolution and said he guessed the rest of the council members were not interested. He is a high school teacher and he wanted to talk a little bit about history. As an earlier speaker mentioned, the United States is founded on dissent and a man named Sam Adams who made his living doing protests against a tyrant named George. Soon after the Constitution was ratified, the Bill of Rights was introduced, in 1791, and the First Amendment to the Bill of Rights laid out a lot of freedoms, which the flag represents. Throughout history, the country had a lot of issues to deal with, such as slavery and many, many civil rights that were covered in the Constitution were not actually granted. The 19th Century saw the end of slavery, but legally it took a lot longer to get those rights to the people. In the 20th Century there are a lot of activities that people would like to call progress, such as Brown vs. the Board of Education, in 1954, a major civil rights act, and women voting in 1865. The council every week sits in session under the flag of the United States and Council Member Dunbar had a flag on her campaign literature. The proposed ordinance erodes the Constitution. It is a stain on America and the council knew it.

Erin Palmer, said she heard about the proposed ordinance a couple of days ago and she wanted to support the Arizona Civil Liberties Union's plea for a town hall meeting on it. She felt it was grossly misrepresented by being based on the riot. She did not think that event would ever qualify as a class one or class two assembly. It was not peaceful and the council would never call for a permit for a riot. That is not the definition of a riot. Starting with that, putting something in the people's minds, it has a lot of emotion and damage and people are affected by that, then start talking about the proposition and of course people will be more in tune with it, but it is not factual. It is misrepresentation and she asked that that not be used again at the town hall meeting.

Mayor Walkup asked if anyone else wished to address the council. There was no one. He asked the council's pleasure.

Council Member Ibarra said considering that there had been a lot of public comment, that it was past 11:15 p.m. and more people were present than had been at the council's afternoon study session, he did not think the public hearing should be closed. He thought the public hearing should be continued and other direction given. Closing the hearing he thought would be inappropriate because then the council would not have the ability to hear from the speakers on whatever comes back to the council.

It was moved by Council Member Ibarra to continue the public hearing, send the proposed ordinance to the good government subcommittee and ask that all players, the Arizona Civil Liberties Union, Tour De Tucson, and everyone else they can think of, and see if they can tweak the ordinance then bring it back for a full public hearing after everyone's input is incorporated.

Council Member Ibarra said he thought that was the only fair and appropriate way to consider the ordinance. He understood that there was a time constraint, but he thought it could be put together letting everyone participate and bring it back as soon as possible.

Council Member West wanted to make a few suggestions to Council Member Ibarra. She thought a town hall meeting would be a good idea. She said a lot of people had contacted her who had not read the ordinance and she heard some things at this meeting that she thought were valuable. One thing she did want to point out to Mr. Kromko was that it is perfectly all right for two groups to be on two sides of the street, opposing one another, that is a part of the citizens' First Amendment Rights as well. She wondered if maybe the council could hold a town hall meeting on Wednesday night, March 19. Maybe Monday night is not a good night for some people. If the council held a town hall on Wednesday night and then continued the public hearing to March 24, she thought that might work out well for people and would probably give them a chance to read the proposed ordinance and look for suggestions. She thought the ordinance was on-line.

Council Member West said she would second Council Member Ibarra's motion if he would accept her amendment.

Council Member Ibarra said he would accept the amendment that instead of going to the good government subcommittee, the council would hold a town hall meeting on Wednesday and then bring the ordinance back on the 24th.

Mayor Walkup noted there was a motion on the floor with a second and asked if there was any discussion.

Council Member Leal said continuing the proposed ordinance so that there would be an opportunity for a more inclusive discussion about issues as significant as how the citizen's Constitutional rights are or are not operational and viable for the present and the future was a really significant thing. However, it appeared that that was not what was going to happen. It appeared that the council was going to deal with the ordinance at this meeting, with a few people, then it would be over even though staff had done a pretty good job of trying to do some outreach. He thought the idea of having a much more significant public forum was very important. People had made insightful analogies between the decrease in the separation of powers locally and what is happening nationally with a decrease in the separation of powers. The country in all probability was about to embark on a war. The subject issue, the proposed ordinance, the life of citizens, the civic life of Tucson was going to be put out, exercised, expanded, pumped and they needed to make room for themselves when enacting the proposal. They needed to not constrain each other. It was argued that there were fees in the beginning, \$1,000 minimum. Some of the council argued that that preempted people from enlivening their civic rights.

Tucson talks about being a Top Ten City, but it cannot be if it has subjects instead of citizens. The city's ordinances need to facilitate citizenship and civic rights. If having a \$1,000 fee preempts people from engaging in a march, so too would having to spend \$5,000 to take the city to court. That is why some of the comments had been that there needed to be an appeal to the mayor and council, in part to deal with the issue of the separation of powers. He trusts and has a great regard for Tucson's police chief, but ordinances should not be enacted that will only work if there is a good person in place. Ordinances need to work even if there is a bad person in place. The odds of the council overturning the chief's decisions are not great, but the option needs to exist for the citizens. The chief should never be afraid of having to come to the mayor and council and

justify his or her conclusions on television, in front of God and the world, as to why they had to say no. People have said saying no is not about ideas, it's about safety. Council Member Leal said they should pretend it is 1960 and they are in the south with Martin Luther King planning a march across that bridge. The way the proposed ordinance was written any police chief could use it to prevent that march on the grounds of safety. It is 40 years later and everyone knew if that had happened it would have been about political repression. There needs to be an appeal to the council. Some of the speakers said that, they also said they needed a real hearing and he agreed with both. He thought what Council Members Ibarra's and West's amendment provided a clearing to be able to do that as a community.

Mayor Walkup asked if there was any further discussion on the motion to allow a town hall meeting on Wednesday.

Council Member Leal said he thought that was too soon.

Council Member Ibarra said he thought it was too soon and another date was being suggested.

Mayor Walkup said that would change the motion.

Council Member Ibarra said Wednesday was two days from this meeting and that was not enough notice.

Council Member West said that was probably true, but she did not know why the public hearing could not be continued to the 24th, and the council hold a town hall meeting also. She asked if that made sense.

James Keene, city manager, asked if the one of the council members who knew could share the alternative proposal so everyone would know what dates were being suggested.

Council Member West said the council was hearing from the audience that Wednesday was not enough time for them to study the ordinance and get back to the council. She thought there needed to be a town hall meeting before the next part of the public hearing.

Council Member Ibarra asked if Saturday was acceptable, or Sunday. He said that would be a weekend day and most people are off then.

Council Member West asked if Saturday would work and someone in the audience responded that that was the weekend of the Fourth Avenue Street Fair.

Vice Mayor Scott asked how soon the ordinance needed to be in place in order to accommodate March Madness.

Mr. Keene said he wanted to be respectful of the last speaker, but there was a reality that the ordinance was driven by and crafted for potential Final Four difficulties. It was true that that had nothing to do with the logistics of managing a potential riot, but it did have a lot to do with the clarity of the police department being able to act. Everyone

had to remember the mess after the last riot when questions were raised about whether or not the police had the authority to do what they did, they had meetings with all kinds of people, it was terrible. He said it was very important that everyone is clear, when people choose whether to break the law or not break it, about what the law is both in terms of how the police respond and also the aftermath, which in the Fourth Avenue riot was months of bad public relations, concerns, lawsuits, and questions. That cannot be minimized. Certainly if someone is going to riot they are not going to get a permit, but the law would be very clear and in the aftermath the city's response would be clear. He said the unfortunate matter in all of this, and it really was unfortunate on a lot of levels, was the potential for going to war at the same time as dealing with the other issue. He understood why that raised a lot of issues and concerns. However, as a city they had to balance lots of issues and public uses and the proposed ordinance was designed, and he understood the concern about separating the fair and demonstrations, but it was designed to try to distinguish between different situations and uses. He thought that if people had the opportunity to truly read the ordinance, read the letter from the Arizona Civil Liberties Union, to read the city attorney's response to that May 12 letter, the ordinance was on-line, they could put in the other things. The Final Four games were scheduled for April 7, so they were dealing with the need to have more opportunity for people to review it and some comment, and for the council to take action.

Council Member West said she thought the proposed ordinance should have been brought to the mayor and council a lot sooner than it was. If there was some urgency in getting something done the council needed to think it through. She thought they might have the right to call a special meeting, the council had done that in the past and she thought they could do so again. She was concerned that there were so many people at the meeting who had not seen the proposed ordinance and she thought before they left the council could make sure that they knew how to find it on-line. She had some real concerns about that. Some of the statements that were made were appropriate comments that the council ought to be considering.

Mayor Walkup asked if there was any further discussion.

Council Member Dunbar said March is a month with a fifth Monday and asked if the council could call a special meeting on that Monday. She thought they should hold it at the Tucson Convention Center because they would need a larger area. She said she was having a real problem as they kept talking and she thought part of the problem the audience had was they were talking about the Final Four event and the peace march and they have nothing to do with one another. To keep putting them together was upsetting to her, so she could imagine how upsetting it was to the people in the audience. As far as the time factor, she said everyone on the council that she had talked to was a little upset that all of the staff work on the ordinance had been done apart from the council. They had not had a study session on it, the good government committee did not have a meeting on it, it was just suddenly a public hearing. For those reasons, she thought the council should look at it again on the 31st of March. She wanted the staff to hear her loud and clear that the Final Four and the fair should be separated from other gatherings. They needed to be addressed in a different matter. It could not be done under one encompassing item.

Mayor Walkup said he thought the continuation of the public hearing was valid until a date specific. He wanted to talk about the possibility of a special council meeting on this matter on Monday, March 31, 2003. That sounded reasonable and if the council did that he thought a reasonable target date for a town hall meeting would be a week from Wednesday, the 19th of March and an open invitation would be given for attendance.

Vice Mayor Scott said she had scheduled a hearing on the budget on the 26th so that people who were torn between concerns could have input.

Mayor Walkup said they were asking a group of people to be involved and asked about setting the time for the town hall at 7:00 p.m., one week from this coming Wednesday, with the room to be announced.

Mr. Keene said he knew it was getting late, but if the council did have a night meeting, time was getting short between this meeting and potential action on the 31st. He asked how the council might think staff would distinguish between the Final Four and this issue. The real point was that staff was not doing something that involved permit writing during the Final Four. They were trying to distinguish what is allowed and that is why the issues become linked. Staff was trying to say what is allowed so when it is something else they can clearly say it is outside the bounds. He asked the council to think about that and send e-mails or whatever and Ms. Sutherland could make some suggestions as to how that can be done.

Mayor Walkup said he wanted everyone in the audience to know what the council was doing so they could put it on their calendars. He said Council Member Ibarra's motion was to continue the public hearing until the 31st of March and at the agenda committee meeting on March 18, schedule a special council meeting for that date to discuss this issue. On March 26, 2003, at 7:00 p.m., at the Tucson Convention Center, specific room not yet known, a town hall meeting would be held on this issue. He called for the vote.

The motion made by Council Member Ibarra, seconded by Council Member West, as stated by Mayor Walkup, carried by a voice vote of 7 to 0.

15. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. Speakers would be limited to three-minute presentations. He asked if anyone wished to address the council. There was no one.

16. ADJOURNMENT: 11:40 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, March 24, 2003, at 7:30 p.m., in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona held on the 17th day of March, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DD:DP:mjv
Pr agnst tp:nd